

# DR. AMBEDKAR: THE PRINCIPAL ARCHITECT OF THE CONSTITUTION OF INDIA

## Clause wise Discussion on the Draft Constitution

30th July 1949 to 16th September 1949

### SECTION SIX

#### Clause-wise Discussion

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#### ARTICLE 261

##### **The Honourable Dr. B. R. Ambedkar: Sir, I move:**

"That in article 261, for the word 'Parliament' the words 'each House of Parliament ' he substituted. "

**The Honourable Dr. B. R. Ambedkar:** Mr. President, Sir, I am sorry I cannot accept the amendments moved to this article. It seems to me that the amendment are based upon a complete misunderstanding of the provisions contained in article 261, and I feel that no amendment is necessary at all. In order to understand exactly what article 261 means, you have to go back to the previous articles which deal with the distribution of the income-tax and the distribution of the net proceeds of the Centrally collected excise duties. Obviously, with regard to the distribution of the income-tax, the article which we have passed so far leave the matter entirely with the President acting on

the recommendations of the Finance Commission. That being so, it would not now be possible to say by an amendment that so far as the recommendations with regard to the distribution of the income-tax are concerned, the matter may be left to Parliament. My submission is that that issue is now closed, we having passed an article leaving to the President the allocation and the distribution of the income-tax either in the initial stage or in the subsequent variations.

Now, the other matter which is covered by article 261 relates to the distribution of the revenue collected from Centrally levied excise duties. It is also clear from the article that we have passed that this matter shall be governed by the law made by Parliament. The President cannot do it himself. Therefore the words " shall put before Parliament a memorandum stating the action that has been taken " merely means this that the President shall say, as he is bound to say, that a Bill shall be introduced before Parliament to regularise or sanction the proceeds of the excise duties and the manner in which they are to be allocated. Consequently, if my Friend, Prof. Shibban Lal Saksena will read article 261 in relation to the other articles that we have passed, he will realise that so far as the distribution of the excise duties is concerned, the result will be the same as what he proposes to bring about by his amendment. therefore I think that his amendment is quite unnecessary.

**Mr. President:** I will now put the amendments to the vote.

*[Articles 261, as amended by Dr. Ambedkar's amendment was adopted and added to the Constitution.]*

### **ARTICLE 263**

**The Honourable Dr. B. R. Ambedkar:** Sir, I move:

" That for article 263 the following be substituted :— (Custody of Consolidated Funds, the payment of moneys into and withdrawal of moneys from such funds).

' 263. (1) The custody of the Consolidated Fund of India, the payments of moneys into such Fund, the withdrawal of moneys therefrom and all other matters connected with or ancillary to the matters aforesaid shall be regulated by law made by Parliament, and until provision in that behalf is so made by Parliament, shall be regulated by rules made by the President.

(2) The custody of the Consolidated Fund of a State, the payments of moneys into such Fund and the withdrawal of moneys therefrom, and all other matters connected with or ancillary to the matters aforesaid shall be regulated by law made by the Legislature of the State, and, until provision in that behalf is so made by the Legislature of the State shall be

regulated by rules made by the Governor of the State. ' "

I do not think any explanation is necessary.

**Pandit Hirday Nath Kunzru** : Mr. President, I move:

" That in the amendment just moved by Dr. Ambedkar, after the words ' Consolidated Fund ', wherever they occur, the words ' and the Contingency Fund ' be inserted ; and for the words ' such Fund ', wherever they occur, the words ' such Funds ' be substituted. "

The House has already agreed to the establishment of a Contingency Fund. It is therefore necessary to provide for the manner in which money may be put into the Contingency Fund and may be withdrawn from it. This is a purely formal amendment and I trust that the House will accept it.

**Mr. President:** I take it that Dr. Ambedkar will accept Pandit Kunzru's amendment.

**The Honourable Dr. B. R. Ambedkar:** I accept the amendment. Article 263, as amended, was added to the Constitution.

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#### ARTICLE 267

**The Honourable Dr. B. R. Ambedkar:** Sir, I move :

" That in article 267—

(i) after the words ' Crown in India ' the words ' or after such commencement in connection with the affairs of the Union or of a State ' be inserted ;

(ii) for the words ' revenues of India ' wherever they occur, the words ' Consolidated Fund of India ' be substituted ;

(iii) for the words ' revenues of a State ' wherever they occur, the words ' Consolidated Fund of the State ' be substituted ;

(iv) the words and Figure ' for the time being specified in Part I of the First Schedule ' be omitted ; and

(v) for the words ' revenues of the State ', the words ' Consolidated Fund of the State ' be substituted. "

It is just consequential.

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**The Honourable Dr. B. R. Ambedkar:** Sir, I do not accept any amendment.

**Mr. President:** I put the amendments to vote.

*[Dr. Ambedkar's amendment was adopted. All other amendments moved by Prof. S. L. Saksena, H. V. Kamath and Dr. P. S. Deshmukh were rejected. Article 267, as amended, was added to the Constitution.]*

## ARTICLE 268

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**The Honourable Dr. B. R. Ambedkar:** Sir, except for the last oration of my Friend Prof. K. T. Shah in which he suggested that we should introduce a clause putting limitation upon the authority of Parliament to sanction loans, I was really quite unable to understand the dissent which has been expressed by other speakers with regard to the provision contained in article 268. It is admitted that it is the executive alone which can pledge the credit of the country for borrowing purposes, for borrowing is an executive act in one aspect of the case, but in this article it is not proposed that the power of the executive to borrow is to be unfettered by any law that is to be made by Parliament. This article specifically says that the borrowing power of the executive shall be subject to such limitations as Parliament may by law prescribe. If Parliament does not make a law, it is certainly the fault of Parliament and I should have thought it very difficult to imagine any future Parliament which will not pay sufficient or serious attention to this matter and enact a law. Under the article 268 I even concede that there might be an Annual Debt Act made by Parliament prescribing or limiting the power of the executive as to how much they can borrow within that year. I therefore do not see what more is wanted by those who expressed their dissent from the provisions of article 268. It is of course a different matter for consideration whether we should have a further provision limiting the power of the Parliament to pledge the credit of the country. It seems to me that even that matter may be left to Parliament because it will be free for Parliament to say that borrowing shall not be done on the pledging of certain resources of the country. I do not see how this article prevents Parliament from putting upon itself the limitations with regard to the guarantees that may be given by Parliament for the ensurement of these loans or borrowings. I therefore think that from all points of view this article 268 as it stands is sufficient to cover all contingencies and I have no doubt about it that, as my friend Mr. Ananthasayanam Ayyangar said, we hope that Parliament will take this matter seriously and keep on enacting laws so as to limit the borrowing authority of the Union,—I go further and say that I not only hope but I expect that Parliament will discharge its duties under this article.

**Shri H. V. Kamath :** Would not Dr. Ambedkar agree to the deletion of the words, " if any " ?

**The Honourable Dr. B. R. Ambedkar:** I have been considering that, but I do not think that will improve matters, because the words are "as may from time to time".

**Mr. President:** I take it the amendment to substitute the words " Consolidated Fund of India " is accepted.

Article 268, as amended, was added to the Constitution.

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### ARTICLE 269

**Mr. President:** There are some amendments which are printed in the II Volume of the printed amendments on page 313. Then we shall take up amendment No. 107 by Dr. Ambedkar.

**The Honourable Dr. B. R. Ambedkar:** Sir, I move :

" That in clause (1) of article 269, the words and figures ' for the time being specified in Part I of the First Schedule ', be omitted. "

"That in clause (1) of article 269, for the words 'revenues of the State ' the words 'Consolidated Fund of the State ', be substituted."

" That with reference to amendment No. 2972 of the List of Amendments, for clause (2) of article 269, the following clause be substituted:—

' (2) The Government of India may, subject to such conditions as may be laid down by or under any law made by Parliament, make loans to any State or, so long as any limits fixed under article 268 of this Constitution are not exceeded, give guarantees in respect of loans raised by any State, and any sums required for the purpose of making such loans shall be charged on the Consolidated Fund of India. ' "

The important change by my amendment No. 107 is that originally the Government of India was given a free hand in this matter; now the action, of the Government of India is subject to such conditions as may be laid down by or under any law made by Parliament.

Sir, I move:

" That in clause (3) of article 269, the words and figures ' for the time being specified in Part I or Part III of the First Schedule ' be omitted. "

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**The Honourable Dr. B. R. Ambedkar:** I do not think. Sir, any reply is called for.

*[Article 269, as amended by Dr. Ambedkar's amendment was adopted and added to the Constitution.]*

### ARTICLES 5 AND 6

**Mr. President:** We have now to take up articles 5 and 6 of the original

draft. I find there is a veritable jungle of amendments, something like 130 or 140 amendments, to these two articles. I suggest that the best course will be for Dr. Ambedkar to move the articles in the form in which he has finally framed them and I shall then take up the amendments to this amended draft. Both 5 and 6 go together, I think, Dr. Ambedkar.

**Prof. K. T. Shah :** May I know what happens to the amendments in the Printed List ' ? They have all been tabled as amendments to the original draft. I do not quite understand your suggestion as to the process in which the amendments would now be taken up.

**Mr. President:** If there is any amendment which is of a substantial nature, which touches any of the amended drafts as proposed by the Drafting Committee, I shall certainly take it up, but I leave it to the Members to point out to me which particular amendment they wish to move.

**Dr. P. S. Deshmukh :** If the original draft is not moved, all the amendments tabled to that draft go by the wind.

**Mr. President:** We do not move the original draft, but it will be taken as moved and then the other amendments come in.

Members will find that Dr. Ambedkar has given notice of certain amendments which have been circulated to Members. The first is No. 1 in List 1.

**The Honourable Dr. B. R. Ambedkar:** Sir, May I give the references ? The amendments of which notice has been given about the citizenship clause are spread over various lists, and I propose to give in the beginning to Members the references to the various lists. The first amendment is No. 1 of List 1. Then come amendments Nos. 128, 129, 130, 131, 132 and 133 of List IV. These are the various proposals of the Drafting Committee with regard to this article. I feel that the House may not be in a position to get a clear and complete idea if these amendments were moved bit by bit, separately. Therefore what I propose to do is this that I will move a consolidated amendment, so to say, which I have prepared, consisting of amendments Nos. 1, 128, 129, 130 and 133. My Friend, Mr. T. T. Krishnamachari, will subsequently move the other two amendments which are Nos. 131 and 132 in List IV. In amendment No. 129, it should read " of the proposed article 5A " instead of " of the proposed article 5." It is a printing error. With these preliminary observations, so to say, I move my amendment:

" That for articles 5 and 6, the following articles be substituted :—( Citizen at the date of Commencement of this Constitution).

" 5. At the date of commencement of this Constitution, every person who has his domicile the territory in India and—

(a) who was born in the territory of India; or  
(b) either of whose Parents was born in the territory of India; or  
(c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding the date of such commencement.

shall be a citizen of India, provided that he has not voluntarily acquired the citizenship of any foreign State.

(Rights of citizenship of certain persons who have migrated to India from Pakistan).

5-A. Notwithstanding anything contained in article 5 of this Constitution, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the date of commencement of this Constitution if—

(a) he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted) ; and

(b) (i) in the case where such person has so migrated before the nineteenth day of July 1948, he has ordinarily resided within the territory of India since the date of his migration; and

(ii) in the case where such person has so migrated on or after the nineteenth day of July 1948 he has been registered as a citizen of India by an officer appointed in this behalf by the Government of the Dominion of India on an application made by him therefor to such officer before the date of commencement of this Constitution in the form prescribed for the purpose by that Government:

Provided that no such registration shall be made unless the person making the application has resided in the territory of India for at least six months before the date of his application.

(Rights of citizenship of certain migrants to Pakistan)

5-AA. Notwithstanding anything contained in articles 5 and 5-A of this Constitution a person who has after the first day of March 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India:

Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of article 5-A of this Constitution be deemed to have migrated to the territory of India after the nineteenth day of July 1948.

**Shri Jaspat Roy Kapoor** (United Provinces : General) : This, you had said, would be moved by Mr. T. T. Krishnamachari.

**The Honourable Dr. B. R. Ambedkar**: I have included it in the consolidated article as I am proposing to accept the amendment which will be moved by

him.

(Right of citizenship of certain persons of Indian origin residing outside India).

5-B. Notwithstanding anything contained in articles 5 and 5-A of this Constitution, any person who or either of whose parents or any of whose grand parents was born in India as defined in the Government of India Act, 1935 ( as originally enacted) and who is ordinarily residing in any territory outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefor to such diplomatic or consular representative, whether before or after the commencement of this Constitution in the form prescribed for the purpose by the Government of the Dominion of India or the Government of India.

(Continuance of the rights of citizenship).

5-C. Every person who is a citizen of India under any of the foregoing provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen.

(Parliament to regulate the right of citizenship by law.).

6. Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating."

Sir, I would reserve my remarks after the amendments to my draft are moved by Mr. T. T. Krishnamachari and that will complete the thing.

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**Mr. President:** If we take up all the either amendments, I think there will not be any end to them. First, let Dr. Ambedkar explain his proposition and then the other amendments may be moved.

**The Honourable Dr. B. R. Ambedkar:** Mr. President, Sir, except one other article in the Draft Constitution, I do not think that any other article has given the Drafting Committee such a headache as this particular article. I do not know how many drafts were prepared and how many were destroyed as



being inadequate to cover all the cases which it was thought necessary and desirable to cover. I think it is a piece of good fortune for the Drafting Committee to have ultimately agreed upon the draft which I have moved, because I feel that this is the draft which satisfies most people, if not all.

**An Honourable Member** : Question.

**The Honourable Dr. B. R. Ambedkar**: Now, Sir, this article refers to citizenship not in any general sense but to citizenship on the date of the commencement of this Constitution. It is not the object of this particular article to lay down a permanent law of citizenship for this country. The business of laying down a permanent law of citizenship has been left to Parliament, and as Members will see from the wording of article 6 as I have moved, the entire matter regarding citizenship has been left to Parliament to determine by any law that it may deem fit. The article reads—

" Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship. "

The effect of article 6 is this, that Parliament may not only take away citizenship from those who are declared to be citizens on the date of the commencement of this Constitution by the provisions of article 5 and those that follow, but Parliament may make altogether a new law embodying new principles. That is the first proposition that has to be borne in mind by those who will participate in the debate on these articles. They must not understand that the provisions that we are making for citizenship on the date of the commencement of this Constitution are going to be permanent or unalterable. All that we are doing is to decide *ad hoc* for the time being.

Having said that, I would like to draw the attention of the Members to the fact that in conferring citizenship on the date of the commencement of this Constitution, the Drafting Committee has provided for five different classes of people who can, provided they satisfy the terms and conditions which are laid down in this article, become citizens on the date on which the Constitution commences.

These five categories are :

(1) Persons domiciled in India and born in India : In other words, those who form the bulk of the population of India as defined by this Constitution ;

(2) Persons who are domiciled in India but who are not born in India but who have resided in India. For instance persons who are the subjects of the Portuguese Settlements in India or the French Settlements in India like Chandernagore, Pondicherry, or the Iranians for the matter of that who have come from Persia and although they are not born here, they have resided for a long time and undoubtedly have the intention of becoming the citizens of India.

The three other categories of people whom the Drafting Committee

proposes to bring within the ambit of this article are :

(3) Persons who are residents in India but who have migrated to Pakistan ;

(4) Persons resident in Pakistan and who have migrated to India;

and

(5) Persons who or whose parents are born in India but are residing outside India.

These are the five categories of people who are covered by the provisions of this article. Now the first category of people *viz.*, persons who are domiciled in the territory of India and who are born in the territory of India or whose parents were born in the territory of India are dealt with in article 5 clauses (a) and (b). They will be citizens under those provisions if they satisfy the conditions laid down there.

The second class of people to whom I referred, *viz.*, persons who have resided in India but who are not born in India are covered by clause (c) of article 5, who have been ordinarily resident in the territory of India for not less than five years immediately preceding the date of such commencement. The condition that it imposes is this that he must be a resident of India for five years. All these clauses are subject to a general limitation, *viz.*, that they have not voluntarily acquired the citizenship of any foreign State.

With regard to the last class *viz.*, persons who are residing abroad but who or whose parents were born in India, they are covered by my article 5-B which refers to persons who or whose parents or whose grandparents were born in India as defined in the Government of India Act, 1935, who are ordinarily residing in any territory outside India—they are called Indians abroad. The only limitation that has been imposed upon them is that they shall make an application if they want to be citizens of India before the commencement of the Constitution to the Consular Officer or to the Diplomatic Representative of the Government of India in the form which is prescribed for the purpose by the Government of India and they must be registered as citizens. Two conditions are laid down for them—one is an application and secondly, registration of such an applicant by the Consular or the Diplomatic representative of India in the country in which he is staying. These are as I said very simple matters.

We now come to the two categories of persons who were residents in India who have migrated to Pakistan and those who were resident in Pakistan but have migrated to India. The case of those who have migrated to India from Pakistan is dealt with in my article 5-A. The provisions of article 5-A are these—

Those persons who have come to India from Pakistan are divided into two categories—

- (a) those who have come before the 19th day of July 1948, and
- (b) Those who have come from Pakistan to India after the 19th July 1948.

Those who have come before 19th July 1948, will automatically become the citizens of India.

With regard to those who have come after the 19th July 1948, they will also be entitled to citizenship on the date of the commencement of the Constitution, provided a certain procedure is followed, *viz.*, he again will be required to make an application to an Officer appointed by the Government of the Dominion of India and if that person is registered by that Officer on an application so made.

The persons coming from Pakistan to India in the matter of their acquisition of citizenship on the date of the commencement of the Constitution are put into two categories—those who have come before 19th July 1948 and those who have come afterwards. In the case of those who have come before the 19th July 1948, citizenship is automatic. No conditions, no procedure is laid down with regard to them. With regard to those who have come thereafter certain procedural conditions are laid down and when those conditions are satisfied, they also will become entitled to citizenship under the article we now propose.

Then I come to those who have migrated to Pakistan but who have returned to India after going to Pakistan. There the position is this. I am not as fully versed in this matter as probably the Ministers dealing with the matter are, but the proposal that we have put forth is this if a person who has migrated to Pakistan and, after having gone there, has returned to India on the basis of a permit which was given to him by the Government of India not merely to enter India but a permit which will entitle him to resettlement or permanent return, it is only such person who will be entitled to become a citizen of India on the commencement of this Constitution. This provision had to be introduced because the Government of India, in dealing with persons who left India for Pakistan and who subsequently returned from Pakistan to India, allowed them to come and settle permanently under a system which is called the 'Permit system'. This permit system was introduced from the 19th July 1948. Therefore the provision contained in article 5-B deals with the citizenship of persons who after coming from Pakistan went to Pakistan and returned to India. Provision is made that if a person has come on the basis of a permit issued to him for resettling or permanent return, he alone would be entitled to become a citizen on the date of the commencement of the Constitution.

I may say, Sir, that it is not possible to cover every kind of case for a limited purpose, namely, the purpose of conferring citizenship on the date of the

commencement of the Constitution. If there is any category of people who are left out by the provisions contained in this amendment, we have given power to Parliament subsequently to make provision for them. I suggest to the House that the amendments which I have proposed are sufficient for the purpose and for the moment and I hope the House will be able to accept these amendments.

**Shri B. M. Gupta** (Bombay : General) : Was the permit system brought in on 19th July 1948 ?

**The Honourable Dr. B. R. Ambedkar**: Yes, on the 19th July '48 there was an ordinance passed that no person shall come in unless he has a permit, and certain rules were framed by the Government of India under that, on 19th July 1948, whereby they said a permit may be issued to any person coming from Pakistan to India specifically saying that he is entitled to come in. There are three kinds of permits. Temporary Permit, Permanent Permit and permit for resettlement or permanent return. It is only the last category of persons who have been permitted to come back with the express object of resettlement and permanent return, it is only those persons who are proposed to be included in this article, and no other.

**Mr. President**: I think we shall take up the amendments tomorrow.

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**Mr. President**: I do not think any useful purpose will be served by further speeches. The amendments are all there before the Members ; they are free to vote in favour of any amendment they like.

**The Honourable Dr. B. R. Ambedkar** (Bombay : General) : Mr. President. Sir, it has not been possible for me to note down every point that has been made by those who have criticised the draft articles which I have moved. I do not think it is necessary to pursue every line of criticism. It is enough if I take the more substantial points and meet them.

My Friend, Dr. Deshmukh, said that by the draft articles we had made our citizenship a very cheap one. I should have thought that if he was aware of the rules which govern the law of citizenship, he would have realised that our citizenship is no cheaper than would have been made by laws laid down by other countries.

With regard to the point that has been made by my Friend Prof. K. T. Shall that there ought to be positive prohibition in these articles limiting Parliament's authority to make law under article 6 not to give citizenship to the residents of those countries who deny citizenship to Indians resident there, I think that is a matter which might well be left for Parliament to decide in accordance with the circumstances as and when they may arise.

The points of criticism with which I am mostly concerned are those which have been levelled against those parts of the articles which relate to immigrants from Pakistan to India and to immigrants from India to Pakistan. With regard to the first part of the provisions which relate to immigrants coming from Pakistan to India, the criticism has mainly come from the representatives of Assam, particularly as voiced by my Friend Mr. Rohini Kumar Chaudhuri. If I understood him correctly, his contention was that these articles relating to immigrants from Pakistan to India have left the gates open both for Bengalis as well as Muslims coming from East Bengal into Assam and either disturbing their economy or disturbing the balance of communal proportions in that Province. I think, Sir, he has entirely misunderstood the purport of the articles which deal with immigrants from Pakistan to India.

If he will read the provisions again, he will find that it is only with regard to those who have entered Assam before 19th July 1948, that they have been declared, automatically so to say, citizens of Assam if they have resided within the territory of India. But with regard to those who have entered Assam, whether they are Hindu Bengalees or whether they are Muslim, after the 19th July 1948, he will find that citizenship is not an automatic business at all. There are three conditions laid down for persons who have entered Assam after the 19th July 1948. The first condition is that such a person must make an application for citizenship. He must prove that he has resided in Assam for six months and, thirdly, there is a very severe condition, namely that he must be registered by an officer appointed by the Government of the Dominion of India. I would like to state very categorically that this registration power is a plenary power. The mere fact that a man has made an application, the mere fact that he has resided for six months in Assam, would not involve any responsibility or duty or obligation on the registering officer to register him. Notwithstanding that there is an application, notwithstanding that he has resided for six months, the officer will still have enough discretion left in him to decide whether he should be registered or he should not be registered. In other words, the officer would be entitled to examine, on such material as he may have before him, the purport for which he has come, such as whether he has come with a bonafide motive of becoming a permanent citizen of India or whether he has come with any other purpose. Now, it seems to me that, having regard to these three limiting conditions which are made applicable to persons who enter Assam after 19th July 1948, any fear such as the one which has been expressed by my Friend Mr. Rohini Kumar Chaudhuri that the flood-gates will be opened to swamp the Assamese people either by Bengalees or by Muslims, seems to me to be utterly unfounded. If he has any objection to those who have entered Bengal before 19th July 1948—in this

case *on* a showing that the man has resided in India, citizenship becomes automatic—no doubt that matter will be dealt with by Parliament under any law that may be made under article 6. If my friends from Assam will be able to convince Parliament that those who have entered Assam before 19th July 1948 should, for any reason that they may have in mind or they may like to put before Parliament, be disqualified, I have no doubt that Parliament will take that matter into consideration. Therefore, so far as the criticism of these articles relating to immigrants from Pakistan to Assam is concerned, I submit it is entirely unfounded.

Then I come to the criticism which has been levelled on the provisions which relate to immigrants from India to Pakistan. I think that those who have criticised these articles have again not clearly understood what exactly it is proposed to be done. I should like, therefore, to re-state what the articles say. According to the provisions which relate to those who are immigrants from India to Pakistan, any one who has left India after the first March 1947, barring one small exception, has been declared not to be citizens of India. That, I think, has got to be understood very carefully. It is a general and universal proposition which we have enunciated. It is necessary to enunciate this proposition, because on the rule of International Law that birth confers domicile, a person has not to acquire what is called domicile of origin by any special effort either by application or by some other method or by some kind of a grace. The origin of domicile goes with birth. It was felt that those persons who left India, but who were born in India notwithstanding that they went to Pakistan, might, on the basis of the rule of International Law, still claim that their domicile of origin is intact. In order that they should not have any such defence, it is thought wise to make it absolutely clear that any one who has gone to Pakistan after the 1st March—you all know that we have taken 1st March very deliberately, because that was the date when the disturbances started and the exodus began and we thought that there would be no violation of any principle of International justice if we presumed that any man who, as a result of the disturbances went to Pakistan with the intention of residing permanently there, loses his right of citizenship in India. It is to provide for these two things that we converted this natural assumption into a rule of law and laid down that anyone who has gone to Pakistan after 1st March shall not be entitled to say that he still has a domicile in India. According to article 5 where domicile is an essential ingredient in citizenship, those persons having gone to Pakistan lost their domicile and their citizenship.

Now I come to an exception. There are people who, having left India for Pakistan, have subsequently returned to India. Well, there again our rule is

that anyone who returns to India is not to be deemed a citizen unless he satisfies certain special circumstances. Going to Pakistan and returning to India does not make any alteration in the general rule we have laid down, namely that such a person shall not be a citizen. The exception is this: as my Honourable Friend Shri N. Gopaldaswami Ayyangar said, in the course of the negotiations between the two Governments, the Government of India and the Government of Pakistan, they came to some arrangement whereby the Government of India agreed to permit certain persons who went from India to Pakistan to return to India and allowed them to return not merely as temporary travellers or as merchants or for some other purpose of temporary character to visit a sick relation, but expressly permitted them to return to India and to settle permanently and to remain in India permanently. We have got such persons in India now. The question therefore is whether the rule which I have said we have enunciated in this article, not to permit anyone who has gone from India to Pakistan after the 1st March 1947, should have an exception or not. It was felt and speaking for myself I submit very rightly felt that when a Government has given an undertaking to a person to permit him to return to his old domicile and to settle there permanently, it would not be right to take away from that person the eligibility to become a citizen. As my Friend, Mr. Gopaldaswami Ayyangar has said, the class of people covered by this category, having regard to the very large population both of Hindus and Muslims we have, is very small, something between two to three thousand. It would, in my judgement look very invidious, it would in my judgement look a breach of faith if we now said that we should not allow these people whom our-own Government, whether rightly or wrongly, allowed to come away from Pakistan for the purpose of permanent residents here, to have this privilege. It would be quite open to this House to bring in a Bill to prevent the Government of India from continuing the permit system hereafter. That is within the privilege and power of this House, but I do not think that the House will be acting rightly or in accordance with what I call public conscience if it says that these people who, as I said, are so small, who have come on the assurance of our own Government to make their home here, should be denied the right of citizenship. Sir, I do not think therefore that there is any substance in the criticism that has been levelled against these articles and I hope the House will accept them as they are.

**SECTION 291**  
**OF GOVERNMENT OF INDIA ACT, 1935**  
**(AMENDMENT) BILL**

**The Honourable Dr. B. R. Ambedkar:** Mr. Vice-President, Sir, I find from the speeches to which I have listened so far that there is a great deal of misunderstanding as to what this particular Bill, particularly clause 4 of it, proposes to do. I think it is desirable at the outset to tell the House what exactly is intended to be done by clause 4. In order to put the House in a proper frame of mind—if I may say so without meaning any offence—I should like to draw the attention of the House to the wording of Section 291 of the Government of India Act as it was in operation before it was adapted after the Independence Act. Now I shall read just a few lines of that Section 291.

" In so far as provision with respect to matters herein after mentioned is not made by this Act. His Majesty in Council (and I want to emphasise these words His Majesty in Council) may from time to time make provision with respect to those matters or any of them, etc., etc. "

The first thing that I would like to draw the attention of the House is this that in clause 4 of this Bill the matters which are enumerated from (b) to (j) are exactly the matters which are enumerated in the old Section 291. Therefore, it has to be understood at the outset that this clause, clause 4, is not making any fundamental change in the provisions contained in the original Section 291. The matters for which the Governor-General is going to be given powers by the provisions of the new Section 291, as embodied in this Bill, are the same which were given by the original Section 291 to His Majesty in Council. (An Honourable Member : No.) I hope that this will be now clear to everybody and I do not think there can be any doubt on it, for anyone who compares the different clauses in this Bill and in the original Section 291 will have all his doubts removed.

The question, therefore, may be asked as to why is it that we are now, giving the power to the Governor-General. The difficulty, if I may say so, is this. Somehow when the Government of India Act, 1935, came to be adapted after the Independence Act, there was, in my judgement, at any rate, a slip that took place and that slip was this, that this power which originally vested in His Majesty in Council, logically speaking, ought to have been transferred to the Governor-General, because the Governor-General under the Dominion law stepped into the shoes of His Majesty in Council. But, unfortunately, as I said, what happened was this that in adapting this Section 291, the power which we are now giving to the Governor-General was given to the local Legislature, I will read that adapted Section 291. I ask my friends who have been agitating over this to read the section as adapted. This is how it reads :

" In so far as provision with respect to matters herein mentioned is not made in this Act in relation to any Provincial Legislature, provision may be made by Act of that Legislature with respect to those matters or any of them, etc., etc. "



It has now been discovered that that was an error, that really speaking, when the section was adapted at that stage, the Governor-General should have been endowed with those powers, because those powers under the provisions of Section 291 were vested in His Majesty in Council and not in any local legislature what we are doing by this Bill is merely to restore the old position as it existed under the unadapted Section 291. I, therefore, want to submit that any criticism which has been levelled by any Member of the Assembly that there was some kind of a deep-laid game in order to upset the constitution for political motives is absolutely unwarranted. All that we are trying to do is to correct a slip that had taken place then.

I come to the next point, namely, the addition of the words "the composition of the Chamber or Chambers of the legislature. " I quite agree.....

**Dr. P. S. Deshmukh** : May I ask one question. Sir ? Does not the alteration of the words " in so far as provision with respect to matters hereinafter mentioned is not made by this Act ", the omission of these words and making of these provisions applicable to.....

**The Honourable Dr. B. R. Ambedkar**: That is what exactly I am explaining. As I said, the only difference that will now be found between the original article 291 as unadapted and the proposed new clause is this that it is proposed by this new article to give power to the Governor-General to alter the provisions with regard to the composition of the Legislature. I admit that that is a change.

**Dr. P.S. Deshmukh** : Which includes schedules 5 and 6.

**The Honourable Dr. B. R. Ambedkar**: Oh, yes ; that is quite true. I admit without any kind of reservation that that is a change which is being made. Now the question is why should we make that change. The reason why we have to make the change in order to give the Governor-General the power even to alter the composition is to be found in the situation in which we find ourselves. Honourable Members will remember that there has been a considerable shifting of the population on account of partition. The population of East Punjab is surely not in any stereotyped condition. Refugees are coming and going. On the 1st April the population numbered so much ; six months thereafter it may number something quite different from what it was then. Similarly with regard to West Bengal and many other provinces where refugees have been taken by the Government of India under their scheme of rehabilitation or the refugees themselves have voluntarily travelled from one area to another. Obviously you cannot allow the provisions contained in the Fifth and Sixth Schedules with regard to the numbers in the legislature to remain what they were when we know as a matter of fact that the population has lost all relation to the numbers then prescribed in the Schedules. It is

therefore in order to take into account the shifting of the population that power is given to the Governor-General to alter even the Schedules which deal with the composition of the legislature.

I hope my Honourable Friends will now understand that in giving this additional power of making an order with regard to the composition of the Chamber or Chambers the intention is to permit the Governor-General to make an order which will bring the strength of the different legislatures in the provinces affected to suit the numbers in those provinces. There is no nefarious purpose.

**Dr. P. S. Deshmukh** : You had two full years to rectify this position.

**The Honourable Dr. B. R. Ambedkar**: That is a different matter. I am only explaining why these provisions are being introduced by this new clause.

I have said that the other provisions are merely reproductions of what is contained in the original Section 291. This power is not being taken for a wanton or an unnecessary purpose nor is it intended to be used for anything other than a bonafide purpose. Therefore having regard to these circumstances my submission is that clause 4 is a perfectly justifiable proposal, both from the point of view of conferring these powers, which originally vested in His Majesty in Council, to be vested in the Governor-General who is his successor and to give him additional power to alter the composition, because the pattern of the numbers in the different provinces have changed from the 15th August 1947. I quite realise that there has been an error in the Statement of Objects and Reasons where unfortunately a particular reference has been made to West Bengal. I should like to assert that this clause has been intended as a general provision which may be used by the Governor-General for rectifying any of the matters with regard to any province, not particularly West Bengal ; and I think that was against somehow a slip which ought not to have taken place. Members of the House have picked up that particular wording of that particular clause where a pointed reference has been made to West Bengal in order to charge the Government with *malafide*, with having some kind of a bad motive towards the legislature in West Bengal. As I said, it is nothing of the kind. These clauses are general ; they may be used if a situation arises which " calls for their use in West Bengal. They may be used for my province of Bombay where probably today, at any rate, no such circumstance appears. Therefore from that unfortunate statement—if I may say so—no conclusion ought to be drawn that there is any kind of underhand dealing so far as this clause is concerned.

**Shri Suresh Chandra Majumdar** (West Bengal : General) : Is it not possible to drop the words " West Bengal " ?

**The Honourable Dr. B. R. Ambedkar**: I have been telling my Honourable

Friend's that the Statement of Objects and Reasons is not a part of the Act and therefore there can be no amendment moved to the deletion of any word or clause or sentence in the Statement of Objects and Reasons. As soon as this Bill becomes an Act, that Statement of Objects and Reasons will be thrown into the dustbin. It is different from a Preamble and I want Members of the House to concentrate on the Preamble where there is no such reference to West Bengal. Therefore my submission is that there is really nothing to quarrel with in this particular clause. In the first place it restores the original provision as it existed in the Government of India Act, 1935, in its unadapted condition, and secondly it proposes to give power which it has become necessary to give because of the altered position in the provinces.

**An Honourable Member:** Sir, I move that the question be now put.

**Shri H. V. Kamath :** Sir, on a point of order. Dr. Ambedkar has raised fresh points which we wish to discuss and under rule 33 of our Rules you may hold that there has not been sufficient debate, and so refuse to accept this motion for closure.

**Dr. P. S. Deshmukh :** But Dr. Ambedkar is not the Minister in charge.

**Mr. Vice-President:** Yes, that is so ; and the Honourable Member Mr. Kamath has had ample opportunity to speak on this clause. I therefore accept the motion for closure.

The question is:

" That the question be now put. "

The motion was adopted.

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### **ARTICLE 150 (Contd.)**

**Mr. Vice-President:** (Shri V. T. Krishnamachari) : Today we begin with article 150. The House will remember that there was a debate on this article as it originally stood and after three amendments were moved, the article was recommitted to the Drafting Committee. Dr. Ambedkar has now given notice of a new article. I request him to move that article, amendment No. 1 of List I (Fourth Week).

**Mr. Naziruddin Ahmad** (West Bengal : Muslim) : Sir, I have a point of Order. Shall I move it just now or after the amendment is moved ?

**Mr. Vice-President:** You may move it just now.

**Mr. Naziruddin Ahmad :** Mr. Vice-President, Sir, as I have been observing for some time that the Drafting Committee has been springing surprise after surprise on the Members. Every day new amendments of a sweeping character are being sent in by the Drafting Committee. They come in all of a

sudden like Air Raids.

**The Honourable Dr. B. R. Ambedkar** (Bombay : General) : Where is the point of Order ?

**Mr. Vice-President:** May I remind the Honourable Member that this amendment has been brought before the House by Dr. Ambedkar and the Drafting Committee in response to the desire universally expressed in the House. For this reason, I rule out this point of Order. I now ask Dr. Ambedkar to move his amendment.

**The Honourable Dr. B. R. Ambedkar:** Mr. Vice-President, Sir, I move:

"That for article 150, the following be substituted:—( Composition of the Legislative Council)

'150. (1) The total number of members in the Legislative Council of a State having such a Council shall not exceed one-fourth of the total number of members in the Assembly of that State;

Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

(2) Until Parliament may by law otherwise provide, the composition of the Legislative Council of a State shall be as provided in clause (3) of this article.

(3) Of the total number of members in the Legislative Council of a State—

(a) as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities as Parliament may by law specify ;

(b) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years graduates of any university in the State and persons possessing for at least three years qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university ;

(c) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school as may be prescribed by or under any law made by Parliament;

(d) as nearly as may be, one-third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly;

(e) the remainder shall be nominated by the Governor in the manner provided in clause (5) of this article.

(4) The members to be elected under sub-clauses (a), (b) and (c) of clause (3) of this article shall be chosen in such territorial constituencies as may be prescribed by or under any law made by Parliament, and the elections under the said sub-clauses and under sub-clause (d) of the said clause shall be in accordance with the system of proportional representation by

means of the single transferable vote.

(5) The members to be nominated by the Governor under sub-clause (e) of clause (3) of this article shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely:—

literature, science, art, co-operative movement and social services. ' "

As you have said. Sir, this article in a different form was before the House last time. The article as it then stood, merely said that the composition of the Upper Chamber shall be as may be prescribed by law made by Parliament. The House thought that that was not the proper way of dealing with an important part of the constitutional structure of a provincial legislature, and that there shall be something concrete and specific in the matter of the constitution of the Upper Chamber. The President of the Constituent Assembly said that he shared the feelings of those Members of the House who took that view, and suggested that the matter may be further considered by the Drafting Committee with a view to presenting a draft which might be more acceptable to those Members who had taken that line of criticism. As Honourable Members will see, the draft presented here is a compromise between the two points of view. This draft sets out in concrete terms the composition of the Upper Chamber in the different provinces. The only thing it does is that it also provides that Parliament may by law alter at any time the composition laid down in this new article 150. I hope that this compromise will be acceptable to the House and that the House will be in a position to accept this amendment.

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**The Honourable Dr. B. R. Ambedkar:** Mr. Vice-President, Sir, out of the amendments that have been moved, I am prepared to accept the amendments moved by Mr. Sarwate. I think he has spotted a real difficulty in the draft as it stands. The draft says—' University in the State '. It is quite obvious that there are many States with at present no university. All the same there are graduates from other Universities who are residing in that State. It is certainly not the intention to take away the right of a graduate residing in a State to participate in the elections to the Upper Chamber merely because he does not happen to be a graduate of a University in that particular State. In order therefore to make the way clear for graduates residing in the particular State, I think this amendment is necessary and I propose to accept it. I would only say that the word ' habitually ' is perhaps not necessary because residence as a qualification will be defined under the provisions of article 149 where we have the power to describe qualifications and disqualifications.

With regard to the other points of criticisms. I do not know that those who have indulged in high-flown phraseology in denouncing this particular article have done any service either to themselves or to the House. This is a matter which has been debated more than once. Whether there should be a Second Chamber in the province or not was a matter which was debated and the proposition has been accepted that those provinces who want Second Chambers should be permitted to have them. I do not know that any good purpose is served by repeating the same arguments which were urged by those Members at the time when that matter was discussed.

With regard to the merits of the proposition which has been tabled before the House, I have not seen any single constructive suggestion on the part of any Member who has taken part in this debate as to what should be the alternative constitution of the Second Chamber. Here and there bits have been taken and denunciations have been indulged in to point out either that that is a useful provision or a dangerous provision. Well, I am prepared to say that this is a matter where there can be two opinions and I am not prepared to say that the opinion I hold or the opinion of the Drafting Committee is the only correct one in this matter. We have to provide some kind of constitution and I am prepared to say that the constitution provided is as reasonable and as practicable as can be thought of in the present circumstances.

Then there were two points that were made, one of them by my Friend Mr. Nagappa. He wanted that a provision should be made for the representation of agricultural labour. I do not know that any such provision is necessary for the representation of agricultural labour in the Upper Chamber, because the Lower Chamber will be in my judgement having a very large representation of agricultural labour in view of the fact that the suffrage on which the Lower Chamber would be elected would be adult suffrage and I do not know.....

**Shri S. Nagappa :** If that is the case, all other sections also to whom you are giving will also get representation in the Lower Chamber.

**The Honourable Dr. B. R. Ambedkar:** They are provided for very different reasons but agricultural labour would be amply provided in the Lower Chamber.

My friend Shri Muniswami Pillai by an amendment raised the question that there should be special representation for the Scheduled Castes in the Upper Chamber. Now, I should like to point out to him that so far as the Drafting Committee is concerned, it is governed by the report of the Advisory Committee which dealt with this matter. In the report of the Advisory Committee which was placed before the House during August 1947 the following provision finds a place :—

" (c) There shall be reservation of seats for the Muslims in the Lower House

of the Central and Provincial Legislatures on the basis of their population. "

" 3. (a) The section of Hindu community referred to as scheduled caste and defined in scheduled to the Government of India Act 1935 shall have the same rights and benefits which are herein provided for etc., etc., " which means that the representation to be guaranteed to the Scheduled Castes shall be guaranteed only in the Lower Houses of the Central and Provincial Legislatures. That being the decision of the Constituent Assembly, I do not think it is competent for the Drafting Committee to adopt any proposition which I do not want to injure anybody's feeling, that if any one was vociferously in favour of this decision, it was my Friend Mr. Muniswamy Pillay and I think he ought to be content with what he agreed to a hide by then. "

**Mr. Vice-President:** Dr. Ambedkar you have to formally withdraw amendment No. 2.

**The Honourable Dr. B. R. Ambedkar:** Yes I have to withdraw it. The amendment was, by leave of the Assembly, withdraw.

*[6 amendments were negatived and five including the one by Dr. Ambedkar were withdrawn.]*

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**Mr. Vice-President:** I now put Mr. Sarwate's amendment to the House.

The question is:

" That in sub-clause (b) of clause (3) of the proposed article 150, after words ' consisting of persons ' the words ' resident in the State ' he added, and for the words ' in the State ' the words ' in the territory of India ' be substituted. "

The amendment was adopted.

*[Article 150, as amended, was added to the Court.]*

## **PART VIII-A ARTICLE 215-A**

**The Honourable Dr. B. R. Ambedkar:** Sir, I move my amendment No. 6, List I, Fourth Week.

" That after Part VIII, the following new Part he inserted :—

" PART VIII-A

THE SCHEDULED AND TRIBAL AREAS

215-A. In this Constitution—

(a) the expression ' scheduled areas ' means the areas specified in Parts I to VII of Definitions the Table appended to paragraph 18 of the Fifth Schedule in relation to the States

to which those Parts respectively relate subject to any order made under sub-paragraph (2) of that paragraph ;

(b) the expression ' tribal areas ' means the areas specified in Parts I and II of the Table appended to paragraph 19 of the Sixth Schedule subject to any order made under sub-paragraph (3) of paragraph I or clause (b) of sub-paragraph (1) of paragraph 17 of that Schedule.

215B. (1) The provisions of the Fifth Schedule shall apply to the administration and control of the scheduled areas and scheduled tribes in any State for the time being specified in Part I or Part III of the First Schedule other than the State of Assam.

(2) The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the State of Assam. "

Sir, my amendment merely replaces the original articles 189 and 190. The only thing we are doing is that we are transferring the provisions contained in articles 189 and 190 to another and a separate part. It is because of the transposition that it has become necessary to re-number them in order to secure the necessary logical sequence of the new part. Barring minor changes, there are no changes of substance at all, in the new articles proposed by me—article 215A and article 215B.

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**The Honourable Dr. B. R. Ambedkar:** I do not think there is any necessity to offer any remarks in reply.

The motion was adopted.

*[Part VIII A and articles 215A and 215 B were added to the Constitution.]*

## ARTICLE 250

**The Honourable Dr. B. R. Ambedkar:** Sir, I move:—

" That in sub-clause (c) of clause (1) of article 250, after the word ' railway ' a comma and the word ' sea ' be inserted. "

Sir, I move my next amendment also.

" That in clause (2) of article 250, for the words ' revenues of India ' the words ' Consolidated Fund of India ' be substituted. "

**Mr. Naziruddin Ahmad :** ...At present there is a Bill before the Legislature for charging estate duty. Here we are legislating for a long time. Therefore we should have both estate or succession duty.

**The Honourable Dr. B. R. Ambedkar:** Succession duty is covered by (a) which says ' Duties in respect of succession to property '. Why repeat that in (b) ?



**Mr. Naziruddin Ahmad** : The two might have been combined.

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**Mr. Vice-President**: ...Anyway, does Dr. Ambedkar want to say anything ?

**The Honourable Dr. B. R. Ambedkar**: I do not want to say anything.

**Mr. Vice-President**: I will not put the amendments to the House.

*[Both the amendments of Dr. Ambedkar, mentioned above, were adopted. Other amendments were rejected. Article 250 as amended was added to the Constitution.]*

#### ARTICLE 277

**The Honourable Dr. B. R. Ambedkar**: Sir, I beg to move:

" That article 277 be re-numbered as clause (1) of article 277, and to the said article as so re-numbered the following clause be added :—

' (2) Every order made under clause (1) of this article shall, as soon as may be after it is made, be laid before each House of Parliament. ' "

This article 277 is a consequential article. It lays down what shall be the financial consequences of the issue of an emergency proclamation by the President. Clause (1) of the article says that provisions relating to financial arrangements between provinces and the Center may be modified by the President by order during the period of the emergency. It was felt that it was not proper to give the President this absolute and unrestricted power to modify the financial arrangements between the Provinces and the States and that the Parliament should also have a say in the matter. Consequently it is now proposed to add clause (2) to article 277 whereby it is provided that any order made by the President varying the arrangements shall be laid before each House of Parliament. It follows that after the matter is placed before the Parliament. Parliament will take such action as it deems proper, which the President will be bound to carry out.

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**The Honourable Dr. B. R. Ambedkar** (Bombay : General) : Mr. Vice-President, Sir, I have given as close an attention as it is possible to give to the amendment moved by my Honourable Friend Pandit Kunzru, and I am sorry to say that I do not see eye to eye with him, because I feel that in a large measure his amendment seems to be quite unnecessary.

Let us begin by having an idea as to what financial relations between the Center and the provinces are normally going to be. I think it is clear from the articles which have already been passed that the provinces will be drawing upon the Center in the normal course of things :

- (1) proceeds of income-tax under article 251 ;
- (2) a share of the central excise duties under article 253 ; and
- (3) certain grants and subventions under article 255.

I am not speaking of the jute duty because it stands on a separate footing and has been statutorily guaranteed.

Let us also have an idea as to what the article as proposed by me proposes to do. What the article proposes to do is this that it should be open to the President when an emergency has been proclaimed to have the power to reallocate the proceeds of the income-tax, the excise duties and the grants which the Center would be making under the provisions of article 255. The article, as proposed by me, gives the President discretion to modify the allocations under these three heads. That is the position of the draft article as presented to the House by the Drafting Committee.

Now, what does my Friend Pandit Kunzru propose to do by his amendment? If I have understood him correctly, he does not differ from the Drafting Committee in leaving with the President complete discretion to modify two of the three items to which I have made reference, that is to say, he is prepared to leave with the President full and complete discretion to modify any allocation made to the provinces by the Center out of the proceeds of the excise duty and the grants made by the Center under article 255. If I understood him correctly, he would have no difficulty if the President, by order, completely wiped off any share that the Center was bound to give in normal times to the provinces out of the proceeds of the excise duties and the grants made by the Center.

**Pandit Hirday Nath Kunzru** (United Provinces : General) : I never said any such thing.

**The Honourable Dr. B. R. Ambedkar**: Your amendment is limited only to the income-tax. That is what I am trying to point out. You do not by your amendment, in any way suggest that there should be any different method of dealing with the proceeds of the excise duties or the grants made by the Center under article 255.

**Pandit Hirday Nath Kunzru**: The reason why I cast my amendment in that form is this. In so far as the distribution of the proceeds of any taxes depends on a statute passed by Parliament that power cannot be taken away from Parliament but it does not belong to the President. But so far as income-tax is concerned, the Government of India Act, 1935, envisaged the transfer of the full share of the provinces to them within a certain period and allowed the Governor-General, in case there was an emergency, to delay the transfer to the provinces and thus lengthen the total period in which the provinces were to get their full share. That was the only reason ; the inference drawn by my

Honourable Friend is completely unjustified.

**The Honourable Dr. B. R. Ambedkar:** I am entitled to draw the most natural inference from the amendment as tabled.

**Pandit Hirday Nath Kunzru :** The Honourable Member is completely misunderstanding me. Under my amendment the President will have no power to alter the distribution of the proceeds of the Union excise duties.

**The Honourable Dr. B. R. Ambedkar:** I am sorry the Honourable Member did not make the matter clear in his amendment. And if he wants to put a new construction now and make a fundamental change the amendment should have been such as to give me perfect notice as to what was intended. There is nothing in the amendment to suggest that the Honourable Member wants to alter the provisions of articles 253 and 255. It may be an after thought but I cannot deal with after thoughts ; I have to deal with the amendment as it is tabled. Therefore, as I read the amendment, my construction is very natural.

**Pandit Hirday Nath Kunzru :** *The Honourable Member is utterly unjustified.*

**The Honourable Dr. B. R. Ambedkar:** That is the Honourable Member's opinion. My reading is that something new is being put forward now.

**Pandit Hirday Nath Kunzru :** The Honourable Member is misrepresenting me and knows that he is doing so.

**The Honourable Dr. B. R. Ambedkar:** The Honourable Member is misrepresenting his own thoughts. Therefore, as I understand it, there is no question of my Honourable Friend suggesting any alteration in the system of modifying the proceeds of the excise duty and the grant. The only question that he raised is the question of the modification of the allocation of income-tax during an emergency. Even so what do I find ? If I again read his amendment correctly, he is not altogether taking away the discretion which is left to the President in the matter of the modification of the allocation of the income-tax. All that he is doing is that if the President was to make a modification of the allocation of the income-tax as contained in the previous order, then the President should proceed in a certain manner which he has stated in Ms amendment. In other words, the only difference between the draft clause as put by me and the amendment of my Honourable Friend Pandit Kunzru is this that, so far as the discretion of the President is concerned, it should not be left unregulated, that it should be regulated in the manner which he suggests.

My reply to that is this: Where is the reason to believe that in modifying or exercising the power of the President to modify the provisions relating to the distribution of the income-tax he will act so arbitrarily as to take away altogether the proceeds of the income-tax ? Where is the ground for believing that the President will not even adopt the suggestion made by my Honourable

Friend. Pandit Kunzru, in the amendment as he has put it ' ? There is no reason to suppose or to make such an arbitrary suggestion that the President is going to wipe out altogether the total proceeds which the provinces are entitled to receive under the allocation. After all the President will be a reasonable man ; he will know that to a very considerable extent the proceeds of the income-tax do form part of the revenues of the provinces ; and he will also know that, notwithstanding the fact that there is an emergency, it is as much necessary to help the Center as it is necessary to keep the provinces going.

Therefore in my judgement there is no necessity to tie down the hands of the President to act in a particular manner in the way suggested by the amendment of my Friend Pandit Kunzru. It might be that the President on consultation with the provinces or on consultation with the Finance Commission or any other expert authority might find some other method of dealing with the proceeds of the income-tax in an emergency, and the suggestion that he might have then might prove far better than what my Friend Pandit Kunzru is suggesting. I therefore think that it would be very wrong to tie down the hands of the President to act in a particular manner and not leave him the liberty or discretion to act in many other ways that might suggest themselves to him. I suggest that it is better to leave the draft as elastic as it is proposed to be done by the Drafting Committee ; no advantage will be gained by accepting the amendment of my Friend Pandit Kunzru.

As I have said, I have made another amendment in the original draft which left the matter entirely and completely to the discretion of the President and Parliament had no say in the matter. By the new amendment I have proposed it is now possible for Parliament to consider any order that the President may make with regard to the allocation of the revenues ; and therefore if the President is doing something which is likely to be very deleterious or injurious to the interests of the province?, surely many representatives in Parliament who would be drawn from the provinces and who would undoubtedly not forget the interests of the provinces would be in a position to set matters right. I therefore think that the original arrangement should be maintained by virtue of the fact that it is far more elastic than what is suggested by my Honourable Friend Pandit Kunzru.

***[Amendment of Dr. Ambedkar was adopted and that of Pandit Kunzru was negatived. Article 277, as amended was added to the Constitution.]***

## **ARTICLE 280**

**The Honourable Dr. B. R. Ambedkar:** Sir, I move:

" That for article 280, the following article be substituted:— (Suspension of the rights guaranteed by article 25 of the Constitution during emergencies)

' 280. (1) Where a Proclamation of 'Emergency is in operation, the President may by order suspension of the rights declare that the right to move any court for the enforcement of such of the rights conferred by Part III of this Constitution as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may he specified in the Order.

(2) All order made as aforesaid may extend to the whole or any part of the territory of India.

(3) Every order made under clause (1) of this article shall as soon as may be after it is made be laid before each House of Parliament. ' "

Sir, the House will realise that clauses (2) and (3) are additions to the old article. In the old article there was a provision that while a Proclamation of Emergency was in force the President may suspend the provisions for the rights contained in Part III throughout India. Now, it is held that, notwithstanding the fact that there may he emergency, it may be quite possible to keep the enforcement of the rights given by Part III in certain areas intact and there need not be a universal suspension throughout India merely by reason of the proclamation. Consequently clause (2) has been introduced into the draft article to make that provision.

Thirdly, the original article did not contain any provision permitting Parliament to have a say in the matter of any order issued under clause (1). It was the desire of the House that the order of suspension should not be left absolutely unfettered in the hands of the President and consequently it is now provided that such an order should be placed before Parliament, no doubt with the consequential provision that Parliament will be free to take such action as it likes.

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**The Honourable Dr. B. R. Ambedkar:** Sir, I am not at all surprised at the strong sentiments which have been expressed by some speakers who have taken part in the debate on this article against the provisions contained in the clause as I have put forward. The article deals with fundamental matters and with vital matters relating to rights of the people and it is therefore proper that we should approach a subject of this sort not only with caution but—1 am also prepared to say—with some emotion. We have passed certain fundamental

rights already and when we are trying to reduce them or to suspend them we should be very careful as to the ways and means we adopt in curtailing or suspending them.

Therefore my intends who have spoken against that article will, I hope, understand that I am in no sense an opponent of what they have said. In fact I respect their sentiments very much. All the same I am sorry to say that I do not find it possible to accept either any of the amendments which they have moved or the suggestions that they have made. I remain, if I may say so, quite unconvinced. At the same time, I may say that I am no less fond of the fundamental rights than they are.

I propose to deal in the course of my reply with some general questions. It is of course not possible for me to go into all the detailed points that have been urged by the various speakers. The first question is whether in an emergency there should be suspension of the fundamental rights or there should be no suspension at all; in other words, whether our fundamental rights should be absolute, never to be varied, suspended or abrogated, or whether our fundamental rights must be made subject to some emergencies. I think I am right in saying that a large majority of the House realises the necessity of suspending these rights during an emergency ; the only question is about the ways and means of doing it.

Now if it is agreed that it is necessary to provide for the suspension of these rights during an emergency, the next question that legitimately arises for consideration is whether the power to suspend them should be vested absolutely in the President or whether they should be left to be determined by Parliament. Now having regard to what is being done in other countries—and I am sure every one in this House will agree that we must draw upon the experience and the provisions contained in the constitutions of other countries—the position is this. As to the suspension of the right of what is called *haheus corpus* the matter under the English law must of course be dealt with by law. It is not open to the executive to suspend the right of *haheus corpus*. That is the position in Great Britain. Coming next to the position in the United States, we find that while the Congress has power to deal with what are called constitutional guarantees including the suspension of the writ of *hulbeas corpus* the President is not altogether left without any power to deal with the matter. I do not want to go into the detailed history of the matter. But I think I am right in saying that while the power is left with the Congress, the President is also vested with what may be called the *ad interim* power to suspend the writ. My friends shake their heads. But I think if they referred to a standard authority Corwin's book on ' the President ', they will find that that is the position.

**Pandit Hirday Nath Kunzru** : Will you let me interrupt him. Sir ? I am sure he is familiar with Ogg's Government of America. Perhaps he will regard that book as a standard book.

**The Honourable Dr. B. R. Ambedkar**: Yes. That is not the only book. There are one hundred books on the American Constitution. I am certainly familiar with some fifty of them.

**Pandit Hirday Nath Kunzru** : It is stated there that the best legal opinion is that the right to suspend the privilege of the writ of *habeas corpus* vests in the Congress and that the President may exercise it only where, as Commander-in-Chief of the Armed Forces he considers it necessary for the security of the military operations.

**The Honourable Dr. B. R. Ambedkar**: Yes. My submission is that in the United States while the Congress has the power, the President also, as the Executive Head of the State, has the *ad interim* power to suspend.

Now, in framing our Constitution, we have more or less followed the American precedent. By the amendment which I have made, Parliament has been now vested with power to deal with this matter. We also propose to give the President an *ad interim* power to take such action as he thinks is necessary in the matter of the constitutional guarantee.

Therefore, comparing the draft article and comparing the position as you find in the United States, there is certainly not very great difference between the two. Here also the President does not take action in his personal capacity. We have a further safeguard which the American Constitution does not have, namely, our President will be guided by the advice of the executive and, our executive would be subject to the authority of Parliament. Therefore, so far as the question of vesting all the power to suspend the guarantees' is concerned, my submission is that ours is not altogether a novel proposal which is made without either reference to any precedent or made in a wanton manner without caring to what happens to the fundamental rights.

Now, having dealt with that question, I come to amendment No. 74 of Mr. Bhargava. I think that is an important matter and should therefore explain what exactly the provision is. His amendment really refers to article 279, although he has put it as an amendment to article 280. What he wants in that any action taken by the State under the authority conferred upon it by the emergency provisions to suspend the fundamental rights should automatically cease with the ceasing of the Proclamation. I think that is what he wants so far as amendment No. 74 is concerned. My submission is that if the article is read properly, that is exactly what it means. I would like to draw his attention to article 279. He will see that that article does not save anything done under any law made under the powers given by the emergency. In order that the

matter may be clear to him I would like again to draw his attention to article 227. If he compares the two, he will see that there is a fundamental difference between the two articles. Article 227 is also an article which gives power to the Center to pass certain laws in an emergency even affecting the State List. I would draw his attention to clause (2) of article 227. He will find at the end of it that all acts cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate except as respect things done "or omitted to be done before the expiration of the same period. This clause does not occur in article 279. Therefore, not only any law that will be made under the provisions of article 279 will vanish, but anything done will also cease to be validly done. Thus, a person who was arrested under the provisions of any law made under article 279, would when the law has ceased to be in force not be governed by it merely because it has been done under any law made under that article. Under this article 279, not only the law goes, but the act done also goes.

Then I would draw attention to clause (2) of article 8. That again is an important article which must be read with article 279. Article 8 is an exception to the general provisions contained in this Constitution that the existing law will continue to operate. What article 8 says is that any existing law which is inconsistent with any of fundamental rights will be inoperative. Article 8 clause (1) deals with the existing law and clause (2) deals with future laws. Thus, 'any law made under article 279' would be a future law. When the emergency ceases any law made under article 279 will come under clause (2) of article 8 so that if it becomes inconsistent with the fundamental rights it would automatically cease.

Therefore my submission is that, so far as amendment 74 is concerned the fears expressed are groundless. There is ample provision in the existing law which would cover all the cases my Honourable Friend Pandit Thakur Das Bhargava has in mind.

**Pandit Thakur Das Bhargava :** In article 277 (2) the reference is to a law made by Parliament. It has no reference to any action taken by the executive. Secondly, it speaks of law made by Parliament whereas under article 13 we have reference to a law made by a State as defined therein.

**The Honourable Dr. B. R. Ambedkar:** The State there means both, because the word 'State' used in article 279 is used in the same sense in which it is used in Part III where it means both the Center, the provinces and even the municipalities.

**Pandit Thakur Das Bhargava :** Whereas in 227 (1) the reference is only to Parliament.

**The Honourable Dr. B. R. Ambedkar:** That is what I say. 279 will also be



governed by 8. Therefore any law which is inconsistent with the fundamental rights granted will cease to operate.

Now, I proceed to deal with amendment No. 78 of Pandit Bhargava. In that amendment he has stated that the order issued by the President suspending the provisions of any of these fundamental rights shall be expressly ratified. He says that there must be express ratification by Parliament of an order issued by the President. The draft article proposed by the Drafting Committee provides that the ratification may be presumed unless Parliament by a positive action cancels the order of the President. That is the real difference between his amendment and the article as I have formulated.

**Pandit Thakur Das Bhargava** : But it is a very fundamental difference.

**The Honourable Dr. B. R. Ambedkar**: That is a very fundamental thing. In a sense it is fundamental and in a sense it is not fundamental because we have provided that the Proclamation shall be placed before Parliament. That obligation I have now imposed. Obviously if the Parliament is called and the Proclamation is placed before it, it would be a stupid thing if the people who come into the Parliament do not take positive action and such a Parliament would be an unnecessary thing and not wanted.

**Pandit Thakur Das Bhargava** : Is it not necessary to say that the law will only be applicable for the period of the emergency and not for shorter period and not for six months after the proclamation ?

**The Honourable Dr. B. R. Ambedkar**: I am coming to that, but so far as this question is concerned, it is a matter of mere detail whether the Parliament should by an express resolution say that we want the President to withdraw it, or we want the President to continue it, or we want the President to continue it in a modified form. Once Parliament is called and Parliament has become seized of the matter, is it not proper that the matter should be left to Parliament and its consent presumed to have been given unless it has decided otherwise ? Where is the difficulty ? I do not see anything with regard to the amendment.

**An Honourable Member** : It is one o'clock now.

**Mr. Vice-President**: We are going to finish this article.

**The Honourable Dr. B. R. Ambedkar**: Mr. Gupte has moved an amendment which is an amendment to the amendment of Pandit Bhargava, No. 78. He wants that a definite period should be mentioned, that the Proclamation should be placed before Parliament within two months. Pandit Bhargava's amendment was one month, I think, if I mistake not and my original proposal is " as soon as possible ". Well I do not know whether anybody wants to make this a matter of conscience and if this matter was not guaranteed, we are going to fast unto death. I think " as soon as possible "

may be worked in such a manner that the matter may be placed before Parliament within one month, within two months or may be even a fortnight. It is a most elastic phrase and therefore, I submit that the provision as contained in the draft is the best under the circumstances and I hope the House will accept it.

**Mr. Vice-President:** I now place the amendments before the House.

*[All amendments except that of Dr. Ambedkar were either withdrawn or rejected. Article 280 as amended was added to the Contributed.]*

**The Honourable Dr. B. R. Ambedkar** (Bombay: General) : Sir, I move:

" That for article 254 the following article be substituted :— (Public Service Commission for the Union & for the State).

284. (1) Subject to the provisions of this article, there shall be a Public Service Commission for the Union and a Public Service Commission for each State.

(2) Two or more States may agree that there shall be one Public Service Commission for that group of states, and if a resolution to that effect is passed by the House or, where there are two Houses, by each House of the Legislature of each of those States Parliament may by law provide for the appointment of a Joint Public Service Commission (referred to in this Chapter as Joint Commission) to serve the needs of those States.

(2a) Any such law as aforesaid may contain such incidental and consequential provisions as may appear necessary or desirable for giving effect to the purposes of clause (2) of this article.

(3) The Public Service Commission for the Union, if requested so to do by the governor or Ruler of a State, may, with the approval of the President agree to serve all or any of the needs of the State.

(4) References in this Constitution to the Union Public Service Commission or a State Public Service Commission shall, unless the context otherwise requires, be construed as references to the Commission serving the needs of the Union or, as the case may be, the State as respects the particular matter in question."

The article is self-explanatory and I do not think that any observations are necessary to clear up any point in this article. I will therefore reserve my remarks to the stage when I may be called upon to reply to any criticism that may be made.

**Shri Lakshminarayan Sahu** (Orissa : General) : May I know, Sir, why the provision as to any such law by Parliament is introduced and also why mention has been made of Ruler in these provisions ?

**The Honourable Dr. B. R. Ambedkar:** If I understand my friend Mr. Sahu correctly, he wants to know why we have introduced the provision for

Parliament to make law. He will understand that the basic principle is that each State should have its own Public Service Commission. But, if, for administrative purposes or for financial purposes it is not possible for each State to have a Public Service Commission of its own, power is left open for two States by a resolution to confer power upon the center to make provision for a joint Regional Commission to serve the need's of two such States which, as I have said, either for administrative or for financial reasons are not in a position to have a separate independent Commission for themselves. Obviously, when such a power is conferred upon the Center, it must be that the power so conferred must be regulated by law made by Parliament and it should not be open to the President either to constitute a Joint Commission for two States by purely executive order. It is for that purpose that power is given to Parliament to regulate the composition of any Commission which is to serve two States.

**Shri Lakshminarayan Sahu** : The other point as to why the ' Ruler ' has been mentioned ?

**The Honourable Dr. B. R. Ambedkar**: Because it may be that even a State in Part III may find it unnecessary to have an independent Public Service Commission for itself. Consequently, the door again there should not be closed to a State in Part III if that State were to agree to any State in Part I jointly to make a request to the President that a Joint Commission may be appointed. That is the reason why ' Rule ' is included in the provisions of this article.

**Shri R. K. Sidhva** (C. P. & Berar : General) : I want one clarification. In clause (3) it is stated " with the approval of the President, agree to serve all or any of the needs of the State." May I know if any local body wants to utilise the services of the Service Commission, will that be allowed ?

**The Honourable Dr. B. R. Ambedkar**: Yes. There is a separate article for that making provision that if a local authority wants its needs to be served by the Public Service Commission, it will be possible for Parliament to confer such authority upon the Public Service Commission also to serve the needs of such local authority.

(Amendment No. 2 was not moved)

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**Mr. President**: Dr. Ambedkar.

**The Honourable Dr. B. R. Ambedkar**: I do not thin there is anything that I need say.

*[All amendments except that of Dr. Ambedkar were rejected. Article 284 as amended was added to the Constitution.]*

## ARTICLE 285

**Mr. Naziruddin Abrnad :** .. .I think it is difficult for anyone to try to follow these changes. I therefore object not only on the ground of their being in breach of the rules but also on the ground they are in a form not readily intelligible and they should have been expressed as amendments to the Constitution itself.

**The Honourable Dr. B. R. Ambedkar:** This is not the first time when my friend has raised a point of Order. You have been good enough to allow the Drafting Committee to depart from the technicalities of the Rules of Procedure and I therefore submit that in this case also you will be pleased to allow us to proceed.

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**Mr. President:** ...Dr. Ambedkar may explain how the separate articles came into being. You move them together and we may take them separately at the time of voting.

**The Honourable Dr. B. R. Ambedkar:** Yes, they may be put separately. Sir I move:

" That for article 285, the following articles be substituted :— (Appointment & term of office of members).

285. (1) The Chairman and other members of a Public Service Commission shall be appointed, in the case of the Union Commission or a Joint Commission, by the President, and in the case of a State Commission, by the Governor or Ruler of the State:

Provided that at least one-half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years either under the Government of India or under the Government of a State, and in computing the said period of ten years any period before the commencement of this Constitution during which a person has held office under' the Crown shall be included.

(2) A member of a Public Service Commission shall hold office for a term of six years from the date on which he enters upon his office or until he attains, in the case of the Union Commission, the age of sixty-five years, and in the case of a State Commission or a Joint Commission, the age of sixty years, whichever is earlier:

Provided that—

(a) a member of a Public Service Commission may by writing under his hand addressed, in the case of the Union Commission or a Joint Commission, to the President and in the case of

a State Commission, to the Governor or Ruler of the State, resign his office;

(b) a member of a Public Service Commission may be removed from his office in the manner provided in clause (1) or clause (3) of article 285-A of this Constitution.

(3) A person who holds office as a member of a Public Service Commission shall, on the expiration of his term of office, be ineligible for re-appointment to that office.

(Removal & suspension of a member of a Public Service Commission)

285A. (1) Subject to the provisions of clause (3) of this article, the Chairman or any other member of a Public Service Commission shall only be removed from office by order of the President on the ground of misbehaviour after the Supreme Court on a reference being made to it by the President has, on inquiry held in accordance with the procedure prescribed in that behalf under article 121 of this Constitution, reported that the Chairman or such other member, as the case may be, ought on any such ground be removed.

(2) The President in the case of the Union Commission or a Joint Commission and the Governor or Ruler in the case of a State Commission may suspend from office the Chairman or any other member of the Commission in respect of whom a reference has been made to the supreme Court under clause (1) of this article until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything contained in clause (1) of this article, the President may, by order, remove from office the Chairman or any other member of a Public Service Commission if the Chairman or, such other member, as the case may be—

(a) is adjudged as insolvent; or

(b) engages during his term of office in any paid employment outside the duties of his office; "

And here I want to add a third one, as (c) : "

(c) is in the opinion of the President unfit to continue in office by reason of infirmity of mind or body.

(4) For the purpose of clause (1) of this article, the Chairman or any other member of a Public Service Commission may be deemed to be guilty of misbehaviour if he is or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit from emoluments arising therefrom otherwise than as a member and in common with the other members of any incorporated company.

(Power to make regulations as to conditions of service of members & staff of the Commission)

285-B. In the case of the Union Commission or a Joint Commission, the President and in the case of a State

Commission, the Governor or Ruler of the State, may by regulation—

(a) determine the number of members of the Commission, and their conditions of service; and

(b) make provision with respect to the number of members of the staff of the Commission and their conditions of service :

Provided that the conditions of service of a member of a Public Service Commission shall not be altered to his disadvantage after his appointment.

(Bar to the holding of offices by members of Commissions on ceasing to be such members).

285-C. On ceasing to hold office—

(a) the Chairman of the Union Public Service Commission shall be ineligible for further employment either under the Government of India or under the Government of a State;

(b) the chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of any other State Public Service Commission but not for any other employment either under the Government of India or under the Government of a State;

(c) a member other than the Chairman of the Union Public Service Commission shall be eligible for appointment as the Chairman of the Union Public Service Commission or as the Chairman of a State Public Service Commission but not for any other employment either under the Government of India or under the Government of a State;

(d) a member other than the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of that or any other State Public Service Commission, but not for any other employment either Under the Government of India or under the Government of a State.

Sir, these are the clauses which deal with the Public Services Commissions, their tenure of office and qualifications and disqualifications and their removal and suspension. I should very briefly like to explain to the House the matters embodied *here*, the principal matters that are embodied in these articles.

The first point is with regard to the tenure of the Public Service Commission. That is dealt with in article 285. According to the provisions contained in that article the term of office of a member of the Public Service Commission is fixed at six years or in the case of the Union Commission, until he reaches the age of 65 and in the case of a State Commission until he reaches the age of

60. That is with regard to the term of office.

Then I come to the removal of the members of the Public Service Commission. That matter is dealt with in article 285-A. Under the provisions of that article, a member of the Public Service Commission is liable to be removed by the President on proof of misbehaviour. He is also liable to be removed by reason of automatic disqualification. This automatic disqualification can result in three cases. One is insolvency. The second is engaging in any other employment and the third is that he becomes infirm in mind or body. With regard to misbehaviour, the provision is some what peculiar. The Honourable House will remember that in the case of the removal of High Court Judges or the Judges of the Supreme Court, it has been provided in the articles we have already passed that they hold their posts during good behaviour, and they shall not be liable to be removed until a resolution in that behalf is passed by both Chambers of Parliament. It is felt that it is unnecessary to provide such a stiff and severe provision for the removal of members of the Public Service Commission. Consequently it has been provided in this article that the provisions contained in the Government of India Act for the removal of the Judges of the High Court would be sufficient to give as much security and as much protection to the members of the Public Service Commission. I think the House will remember that in the proviso contained in the Government of India Act, what is necessary for the removal of a Federal Court Judge or a High Court Judge is an enquiry made by the Federal Court in the case of the High Court Judges or by the Privy Council in the case of the Federal Court Judges, and on a report being made that there has been a case of misbehaviour, it is open to the Governor-General to remove either the Federal Court Judge or the Judge of the High Court. We have adopted the same provision with regard to the removal of Public Service Commission, wherever there is a case of misbehaviour.

With regard to automatic disqualifications, I do not think that there could be any manner of dispute because it is obvious that if a member of the Public Service Commission has become insolvent, his integrity could not be altogether relied upon and therefore it must act as a sort of automatic disqualification. Similarly, if a member of the Public Service Commission who is undoubtedly a whole-time officer of the State, instead of discharging his duties to the fullest extent possible and devoting all his time, were to devote a part of his time in some other employment, that again should be a ground for automatic disqualification. Similarly the third disqualification, namely, that he has become infirm in body and mind may also be regarded, without any kind of dispute, as a fit case for automatic disqualification. Members of the House will also remember that while reading article 285-A, there is a provision made

for suspension of a member of the Public Services Commission during an enquiry made by the Supreme Court. That provision is, I think, necessary. If the President thinks that a member is guilty of misbehaviour, it is not desirable that the member should continue to function as a member of the Public Services Commission unless his character has been cleared up by a report in his favour by the Supreme Court.

Now, I come to the other important matter relating to the employment or eligibility for employment of the members of the Public Services Commission both—the Union and State Public Services Commissions. Members will see that according to article 285, clause (3), we have made both the Chairman and the Members of the Central Public Services Commission as well as the Chairman of the State Commission, and the members of the State Commission ineligible for reappointment to the same posts: that is to say, once a term of office of a Chairman and Member is over, whether he is a Chairman of the Union Commission or the Chairman of a State Commission, we have said that he shall not be reappointed. I think that is a very salutary provision, because any hope that might be held out for reappointment, or continuation in the same appointment, may act as a sort of temptation which may induce the Member not to act with the same impartiality that he is expected to act in discharging his duties. Therefore, that is a fundamental bar which has been provided in the draft article.

Then the second thing is that according to article 285-C, there is also a provision that neither of these shall be eligible for employment in any other posts. There is therefore a double disqualification. There is no permission to continue them in their office, nor is there provision for their appointment in any other posts. Now, the only exceptions, that is to say, cases where they could be appointed are these :

The Chairman of a State Public Services Commission is permitted to be a Chairman or a Member of the Union Commission, or a Chairman of any other State Commission.

Secondly, the Members of the Union Commission can become Chairman of the Union Commission or any other State Commission.

Thirdly, the Members of the State Commission can become a Chairman or a member of the Union Commission, or the Chairman of a State Commission.

In other words, the exceptions are : namely, that one man, who is a Member of the Union Public Services Commission, may become a Chairman of the State Public Services Commission can become a Chairman of the Union Public Services Commission, or become a Member of the Union Public Services Commission. The principal point to be noted is this, that neither the Chairman nor the Member of a State Commission can have employment



under the same State. He can be appointed by another State as a Chairman or he can be appointed by the Central Government as the Chairman of the Union Public Services Commission or a Member of the Union Public Services Commission, the object being not to permit the State to exercise any patronage in the matter either of giving continued employment in the same post, or in any other post, so that it is hoped that with these provisions the Members of the Commission will be as independent as they are expected to be.

I do not think there is any other point which calls for explanation.

**Shri Lakshminarayan Sahu** : What about Members of Joint Commissions ?

**The Honourable Dr. B. R. Ambedkar** : A Joint Commission is the State Commission. That is defined in clause (4) of article 284.

**Dr. Manmohan Das** (West Bengal : General) : I would like to be clear on some points about 285-A. If the Supreme Court as being referred by the President reports that the Chairman or some other Member of the Public Service Commission should be removed, then will it be obligatory on the part of the President to remove him ?

**The Honourable Dr. B. R. Ambedkar**: Certainly.

**Mr. Naziruddin Ahmad** : You have asked the Honourable Member to explain to the House the difference between the new draft and the original. That would have been helpful for a proper appreciation of the real changes.

**The Honourable Dr. B. R. Ambedkar**: If any point is raised in the course of the debate, I will explain it in the course of my reply.

**Mr. Naziruddin Ahmad** : I do not know whether to oppose or not to oppose.

**The Honourable Dr. B. R. Ambedkar**: You must have read both drafts. The only thing you might not have read are the commas and semicolons.

**Mr. President**: I will now take up the amendments. -

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**The Honourable Dr. B. R. Ambedkar**: Mr. President, Sir, there are just a few points on which I would like to say a word or two in reply to the criticism made on the articles which I have submitted to the House.

The first criticism is with regard to the composition of the Public Service Commission. The reservation made there that at least one-half of the members of the Public Service Commission should have been servants of the Crown has been objected to on the ground that this is really a paradise prepared for the I.C.S. people. I am sorry to say that those who have made this criticism do not seem to have understood the purpose, the significance and the functions of the Public Service Commission. The function of the Public Service Commission is to choose people who are fit for Public Service.

The judgment required to come to a conclusion on the question of fitness presupposes a certain amount of experience on the part of the person who is asked to judge. Obviously nobody can be a better judge in this matter than a person who has already been in the service of the Crown. The reason therefore why a certain proportion is reserved to persons in service is not because there is any desire to oblige persons who are already in the service of the Crown but the desire is to secure persons with the necessary experience who would be able to perform their duties in the best manner possible. However, I am prepared to accept an amendment if my Friend Mr. Kapoor is prepared for it. I am prepared to say—

" Provided that as nearly as may be one-half " instead of saying " Provided that at least one-half"

**Shri H. V. Kamath :** Why not say " not more than one-half " ?

**The Honourable Dr. B. R. Ambedkar:** No, I have done my best. With regard to the second question, that persons who have been in the Public Service Commission should be permitted to accept an honorary office under the State, personally I am not now inclined to accept that suggestion. Our whole object is to make the members of the Public Service Commission independent of the executive. One way of making them independent of the executive is to deprive them of any office with which the executive might tempt them to depart from their duty. It is quite true that an office which is not an office of profit but an honorary office does not involve pay. But as every body knows pay is not the only thing which a person obtains by reason of his post. There is such a thing as " pay, pickings and pilferings ". But even if it is not so, there is a certain amount of influence which an office gives to a person. And I think it is desirable to exclude even the possibility of such a person being placed in a post where, although he may not get a salary, he may obtain certain degree of influence.

Now, I come to the amendment of my Friend Mr. Kunzru. I quite agree with him that there is obviously a distinction made between the services to be employed under the Public Service Commission and the services to be employed under the High Court, the Supreme Court and the Auditor-General. I would like to explain why we have made this distinction. With regard to the staff of the High Court and the Supreme Court, at any rate those who are occupying the highest places are required to exercise a certain amount of judicial discretion. Consequently we felt that not only their salaries and pensions should be determined by the Chief Justice with the approval of the President but the conditions of their service also should be left to be determined by the Chief Justice. In the case of the Public Service Commission much of the staff—in fact the whole of the *staff*— will be merely

concerned with what we call " ministerial duties " where there is no authority and no discretion is left. That is the reason why we have made this distinction. But I quite see that my argument is probably not as sound as it might appear. All the same I would suggest to my Honourable Friend Pandit Kunzru to allow this article to go through on the promise that at a later stage if I find that there is a necessity to make a change I will come before the House with the necessary amendment.

Sir, my attention is drawn to the fact in the cyclostyled copy of my amendment to article 285-A in sub-clause (3)(b) the words ought to be ' in any paid employment '. They have been typed wrongly as ' in any body's employment.' I hope the correction will be made.

As I said to Pandit Kunzru, the Drafting Committee will look into the matter and if it feels that there are grounds to make any alteration they will, with the permission of the House come forward with an amendment so that the position may be rectified.

**Mr. President:** I will now put the amendments to vote first.

The question is :—

" That in amendment No. 3 above, in the proviso to clause (1) of the proposed article 285, for the word ' one-half ' the word ' one third ' be substituted."

**Shri Jaspat Roy Kapoor :** In the place of this I accept the suggestion made by Dr. Ambedkar to have nearly ' as may be one-half '.

**Mr. President:** Then I shall put that to vote. The question is :

" That in amendment No. 3 above, in the proviso to clause (1) of the proposed article 285, for the words ' at least one-half ' the words ' as nearly as may be one-half ' be substituted."

**[The amendment was adopted. Article 285, as amended, was added to the Constitution.]**

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## ARTICLES 286 TO 288-A

**Mr. President:** We shall now proceed with the consideration of article 286 and the subsequent articles.

**The Honourable Dr. B. R. Ambedkar** (Bombay : General) : Sir, May I, with your permission, move amendments Nos. 12, 16, 17 and 19 together ? They all relate to the same subject. There may be a common debate and then you might put each amendment separately.

**Mr. President:** Yes, I agree.

**The Honourable Dr. B. R. Ambedkar:** Sir, I move :

" That for article 286, the following article be substituted :— (Functions of Public Service Commission).

286 (1) It shall be the duty of the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the services of the State respectively.

(2) It shall also be the duty of the Union Public Service Commission, if requested by any two or more States so to do, to assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.

(3) The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted—

(a) on all matters relating to methods of recruitment to civil services and for civil posts;

(b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointment, promotions or transfers;

(c) on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters;

(d) on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown, in a civil capacity, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India or, as the case may be, of the State;

(e) on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State or under the Crown in a civil capacity, and any question as to the amount of any such award,

and it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the President or, as the case may be, the Governor or Ruler of the State may refer to them :

Provided that the President as respects the All India Services and also as respects other services and posts in connection with the affairs of the Union, and the Governor or Ruler, as the case may be, as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted.

(4) Nothing in clause (3) of this article shall require a Public Service Commission to be consulted as respects the manner in which appointments and posts are to be reserved in favour of any backward class citizens in the Union or a State.

(5) All regulations made under the proviso to clause (3) of this article by the President or the Governor or Ruler of a State shall be laid for not less than fourteen days before each House of Parliament or the Houses or each House of the legislature of the State, as the case

may be, as soon as possible after they are made. and shall be subject to such modifications, whether by way of repeal or amendment, as both Houses of Parliament or the House or both Houses of the Legislature of the State may make during the session in which they are so laid."

" That for article 287, the following be substituted :—( Power to extend functions of Public Service Commission).

287. An Act made by Parliament or, as the case may be, the Legislature of a State may provide for the exercise of additional functions by the Union Public Service Commission or the State Public Service Commission as respects the services of the Union or the State and also of any local authority or other body corporate constituted by law or public institution ".

" That for article 288, the following be substituted :— (Expenses of Public Service Commission).

288. The expenses of the Union or a State Public service Commission, including any salaries, allowances and pensions payable to or in respect of the members or staff of the Commission, shall be charged on the Consolidated Fund of India or, as the case may be, the State."

" That for amendment No. 3075 of the List of Amendments the following be substituted :—

" That after article 288, the following new article be added :— (Reports of the Public Service Commissions).

288-A, (1) It shall be the duty of the Union Commission to present annually to the President a report as to the work done by the Commission and on receipt of such report the President shall cause a copy thereof together with a memorandum explaining, as respects the causes, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before each House of Parliament.

(2) It shall be the duty of a State Commission to present annually to the Governor or Ruler of the State a report as to the work done by the Commission, and it shall be the duty of a Joint Commission to present annually to the Governor or Ruler or each of the States the needs of which are served by the Joint Commission a report as to the work done by the Commission in relation to that State, and in either case the Governor or Ruler, as the case may be, shall, on receipt of such report, cause a copy thereof together with a memorandum explaining as respects the cases, if any, where the advice of the Commission was not

accepted, the reasons for such non-acceptance to be laid before the Legislature of the State."

The articles are self-explanatory and I do not think that at this stage it is necessary for me to make any comments to bring out any of the points, because the points are all very plain. I would therefore reserve my remarks towards the end when after the debate probably it may be necessary for me to offer some explanation of some of the points raised.

Sir, I move.

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**Mr. President:** Dr. Ambedkar.

**The Honourable Dr. B. R. Ambedkar:** Mr. President. Sir, after the speeches that have been made by my Friend Mr. Ananthasayanam Ayyangar and my Friend Mr. Kunzru, there is very little that is left for me to say in reply to the various points that have been made. Mr. Jaspat Roy Kapoor said that clause (2) was unnecessary. I do not agree with him because clause (2) deals with a matter which is quite different from the one dealt with in the original article 284. I think it is necessary, therefore, to retain both the clauses.

The only point that remains for me to say anything about is the question that is raised about the Scheduled Castes and the Backward Classes. I think I might say that enough provision has been made, both in article 296 which we have to consider at a later stage and in article 10, for safeguarding the interests of what are called the Scheduled Castes, the Scheduled Tribes and the Backward Classes. I do not think that any purpose will be served by making a provision whereby it would be obligatory upon the President to appoint a member of what might be called either a Scheduled Caste, or Scheduled Tribe or a member belonging to the backward classes.

**Shri A. V. Thakkar** (Saurashtra) : Other backward classes.

**The Honourable Dr. B. R. Ambedkar:** The function of a member of the Public Service Commission is a general one. He cannot be there to protect the interests of any particular class. He shall have to apply his mind to the general question of finding out who is the best and the most efficient candidate for an appointment. The real protection, the real method of protection is one that has been adopted, namely, to permit the Legislature to fix a certain quota to be filled by these classes. I am also asked to define what are backward classes. Well, I think the words "backward classes "so far as this country is concerned is almost elementary. I do not think that I can use a simpler word than the word " Backward Classes ". Everybody in the province knows who are the backward classes, and I think it is, therefore, better to leave the matter as has been done in this Constitution, to the Commission

which is to be appointed which will investigate into the conditions of the state of society, and to ascertain which are to be regarded as backward classes in this country.

**Shri A. V. Thakkar** : May I ask whether it will not take several years before that is done ?

**The Honourable Dr. B. R. Ambedkar**: Yes, but in the meantime, there is no prohibition on any provincial government to make provisions for what are called the backward classes. They are left quite free, by article 10. Therefore, my submission is that there is no fear that the interests of the backward classes or the Scheduled Castes will be overlooked in the recruitment to the services. As my Friend Pandit Kunzru has said, the articles I have presented to the House are certainly a very great improvement upon what the articles were before in the Draft Constitution. We have, if I may say so for myself, studied a great deal the provisions in the Canadian law and the provisions in the Australian law. and we have succeeded, if I may say so, in finding out a *via media* which I hope the House will not find any difficulty in accepting.

**[Article 286, as proposed by Dr. Ambedkar not adopted and added to the Constitution.]**

## ARTICLE 292

**The Honourable Dr. B. R. Ambedkar**: I move that for article 292, the following be substituted : (Reservation of seats for Scheduled castes & Scheduled Tribes in the House of he People).

" 292 (1) Seats shall be reserved in the House of the People for—

(a)	the Scheduled Castes;
(b)	the scheduled tribes except the scheduled tribes in the tribal areas of Assam;
(c)	the scheduled tribes in the autonomous districts of Assam.

(2) The number of seats reserved in any State for the Scheduled Castes or the Scheduled Tribes under clause (1) of this article shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that state People as the population of the Scheduled Castes in that State or of the Scheduled Tribes in that State or part of that State as the case may be, in respect of which seats are so reserved bears to the total population of that State."

This article 292 is an exact reproduction of the decisions of the Advisory Committee in this matter and I do not think any explanation is necessary.

**Mr. President:** This represents the decision which was taken at another session of this House when we considered the Advisory Committee's report. This puts in form the decision then taken....

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**The Honourable Dr. B. R. Ambedkar** (Bombay : General) : I was going to suggest, with regard to the amendment which stands in the name of Rev. Nichols Roy, that this is more relevant to the interpretation clause where the Scheduled Castes and the tribal people will be defined. If my friend is keen on moving this amendment, I think it should properly stand over until we come to that part of the Constitution—article 303.

**Mr. President:** Have you followed Dr. Ambedkar ?

**The Honourable Rev. J. J. M. Nichols-Roy** (Assam : General) : Yes, I have. My amendment was based on the amendment which was going to be moved by Mr. Thakkar, No. 3108, and I now find that the amendment (No. 28) which he is now going to move is in a different form. However, if Mr. Thakkar is not going to move this amendment, I also will not move my amendment now. But I reserve the right that I shall move my amendment at the time when this matter will be discussed under article 303.

**The Honourable Dr. B. R. Ambedkar:** I also suggest that the amendments which stand in the name of Mr. Thakkar should stand over and be taken at the same time when we are dealing with article 303.

**The Honourable Rev. J. J. M. Nichols-Roy :** If Mr. Thakkar agrees. I will agree.

**Shri A. V. Thakkar** (Saurashtra) : I completely agree.

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**Sardar Bhopinder Singh Man** (East Punjab : Sikh) : As a number of amendments have been moved, it seems to me that some time be given to oppose those amendments.

**Mr. President:** As I said we have discussed this very proposition for two full days in this House, and every section of the House had full opportunity of expressing itself on the general principles. Now it is those very principles which are sought to be embodied in the resolution which has been placed before the House by Dr. Ambedkar. I do not think any further discussion will help the Members. I therefore call upon Dr. Ambedkar to speak.

**The Honourable Dr. B. R. Ambedkar:** Mr. President, Sir, a great many of the points which were raised in the course of the debate on this article and the various amendments are, in my judgment, quite irrelevant to the subject matter of this article. They might well be raised when we will come to the



discussion of the electoral laws and the framing of the constituencies. I, therefore, do not propose to deal with them at this stage.

There are just three points which, I think, call for a reply. One point is the one which is raised by Mr. Laskar by his amendment. His amendment is to introduce the words " save in the case of the Scheduled Castes in Assam ". I have completely failed to understand what he intends to do by the introduction of these words. If these words were introduced it would mean that the Scheduled Castes in Assam will not be entitled to get the representation which the article proposes to give them in the Lower House of the Central Parliament, because if the words stand as they are, " save in the case of the Scheduled Castes in Assam " unaccompanied by any other provision, I cannot see what other effect it would have except to deprive the Scheduled Castes of Assam of the right to representation which has been given to them. If I understand him correctly, I think the matter, which he has raised, legitimately refers to article 67B of the Constitution which has already been passed. In that article it has been provided that the ratio of representation in the Legislature should have a definite relation to certain population figures. It has been laid down that the representation in the Lower House at the Center shall be not less than one representative for every 7,50,000 people, or not more than one representative for a population of 5,00,000. According to what he was saying—and I must confess that it was utterly impossible for me to hear anything that he was saying— but if I gathered the purport of it, he seems to be under the impression that on account of the division of Sylhet district the population of the Scheduled Castes in Assam has been considerably reduced and that there may not be any such figure as we have laid down, namely 7,50,000 or 5,00,000, with the result that he feels that the Scheduled Castes of Assam will not get any representation. But I should like to tell him that the provision in article 67(5)(b) does not apply to the Scheduled Castes. It applies to the constituency. What it means is that if a constituency consists of 7,50,000 people, that constituency will have one seat. It may be that within that constituency the population of the Scheduled Castes is much smaller, but that would not prevent either the Delimitation Committee or Parliament from allotting a seat for the Scheduled Castes in that particular area. His fear, therefore, in my judgment, is utterly groundless.

Then I come to the amendment moved by Sardar Hukam Singh in which he suggests that provision ought to be made whereby the Scheduled Castes and the Scheduled Tribes would be entitled to contest seats which are generally not reserved for the Scheduled Castes or the Scheduled Tribes. He said that the Drafting Committee has made a deliberate omission. I do not think that is

correct. It is accepted that. the Scheduled Castes and the Scheduled Tribes shall be entitled to contest seats which are not reserved seats, which are unreserved seats. That is contained in the report of the Advisory Committee which has already been accepted by the House. The reason why that particular provision has not been introduced in article 292 is because it is not germane at this place. This proposition will find its place in the law relating to election with which this Assembly or the Assembly in its legislative capacity will have to deal with. He therefore need have no fear on that ground.

With regard to the point raised by my Friend Mr. Pillai that the population according to which seats are to be reserved should be estimated by a fresh census, that matter has been agitated in .this House on very many occasions. I then said that it was quite impossible for the Government to commit itself to taking a fresh census but the Government has kept its mind open. If it is feasible the government may take a fresh census in order to estimate the population of the Scheduled Castes or the Scheduled Tribes in order to calculate the total presentation that they would be entitled to in accordance with the provisions of article 292. The Government is also suggesting that if in any case it is not possible to have a fresh census, they will estimate the population of these communities on the basis of the voters' strength which may be calculated from them, in which case we might be able to arrive at what might be called a rough and ready estimate of the population. I do not think it is possible for me to go beyond that.

All the other amendments I oppose.

*[Article 292, as amended by Dr. Ambedkar's motion was added to the Constitution.]*

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### ARTICLE 293

**Mr. President:** Dr. Ambedkar.

**The Honourable Dr. B. R. Ambedkar:** I do not think it is necessary to say anything.

*[Article 293 was added to the constitution without any amendment.]*

### ARTICLE 294

**The Honourable Dr. B. R. Ambedkar:** Sir, I move :

" That for article 294, the following be substituted :— (Reservation of seats for minorities in the Legislative Assemblies of the States).

294. (1) Seats shall be reserved for the Scheduled Castes

and the Scheduled Tribes, except the Scheduled Tribes in the tribal areas of Assam in the Legislative Assembly of every State for the time being specified in Part I or Part m of the First Schedule.

(2) Seats shall be reserved also for the autonomous districts in the Legislative Assembly of the State of Assam.

(3) The number of seats reserved for the Scheduled Castes or the Scheduled Tribes in the Legislative assembly of any State under clause (1) of this article shall bear, as nearly as may be, the same proportion to the total number of seats in the assembly as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved bears to the total population of the State.

(4) The number of seats reserved for an autonomous district in the Legislative Assembly of the State of Assam shall bear to the total number of seats in that Assembly a proportion not less than the population of the district bears to the total population of the State.

(5) The constituencies for the seats reserved for any autonomous district of the State of Assam shall not comprise any area outside that district except in the case of the constituency comprising the cantonment and the Municipality of Shillong.

(6) No person who is not a member of a Scheduled Tribe of any autonomous district of the State of Assam shall be eligible for election to the Legislative Assembly of the State from any constituency of that district except from the constituency comprising the cantonment and municipality of Shillong.' "

This article is exactly the same as the original article as it stood in the Draft Constitution. The only amendment is that the provision for the reservation of seats for the Muslims and the Christians has been omitted from clause (1) of article 294. That is in accordance with the decision taken by this Assembly on that matter.

#### **ARTICLE 295-A**

**The Honourable Dr. B. R. Ambedkar:** Sir, I 'move :

" That after article 295, the following new article be inserted :— (Reservation of seats for Scheduled Castes & Scheduled Tribes to cease to be in force after the expiration of ten years from the commencement of this constitution).

' 295-A. Notwithstanding anything contained in the foregoing provisions of this Part, the provisions of this Constitution relating to the reservation of seats for scheduled caste and the Scheduled Tribes either in the House of the People or in the Legislative Assembly of a State shall cease to have

effect on the commencement of this constitution

This is also in accordance with the decision of the House. I do not think any explanation is necessary.

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**Mr. President:** Dr. Ambedkar.

**The Honourable Dr. B. R. Ambedkar** (Bombay: General): Mr. President, Sir, there are just four amendments about which I would like to say a few words. I will first take the amendment of my Friend Mr. Bhargava, and say that I am prepared to accept his amendment, because I find that although in the general body of the report that was made to this House, no mention as to time-limit was made to the proposal for allowing representation to Anglo-Indians by nomination, I find that in the subsequent debate which took place on that report, there is an amendment moved by my friend Pandit Bhargava which is very much in the same terms as the amendment which he has now moved, and I find that that amendment of his was accepted by the House. I, therefore, am bound to accept the amendment that he has moved now.

Next, with regard to the question raised by Mr. Naziruddin Ahmad, one part of it has been, I think, met by the amendment moved by my Friend Mr. Krishnamachari which I also accept. I am not at all clear in my own mind at the present stage whether the words in the clause mean that the time-limit should begin to operate from the commencement of the Constitution or whether from the date of the first election to the new Parliament. But all I can say at this stage is that that is a matter which the Drafting Committee will consider and if it is necessary, they will bring about some amendment to carry out the intention that the period should be from the date of first meeting of the first Parliament.

With regard to the other arguments which have been used by my friend's Mr. Muniswami Pillai and Mr. Manmohan Das, I am sorry it is not possible to accept that amendment. Their proposal is that while they are prepared to leave the clause as it is, they propose to vest Parliament with the power to alter this clause by further extension of the period of ten years. Now first of all we have as I said, introduced this matter in the Constitution itself, and I do not think that we should permit any change to be made in this, except by the amendment of the Constitution itself.

I would like to say one or two words on the remarks of Members of the Scheduled Castes who have spoken in somewhat passionate and vehement terms on the limitation imposed by this article. I have to say that they have

really no cause for complaint, because the decision to limit the thing to ten years was really a decision which has been arrived at with their consent. I personally was prepared to press for a larger time, because I do feel that so far as the Scheduled Castes are concerned, they are not treated on the same footing as the other minorities. For instance, so far as I know the special reservation for the Mussalmans started in the year 1892; so to say, the beginning was made then. Therefore, the Muslims had practically enjoyed these privileges for more or less sixty years. The Christians got this privilege under the Constitution of 1920 and they have enjoyed it for 28 years. The Scheduled Castes got this only in the Constitution of 1935. The commencement of this benefit of special reservation practically began in the year 1937 when that Act came into operation. Unfortunately for them, they had the benefit of this only for two years, for from 1939 practically up to the present moment, or up to 1946, the Constitution was suspended and the Scheduled Castes were not in a position to enjoy the benefits of the privileges which were given to them in the 1935 Act, and it would have been quite proper I think, and generous on the part of this House to have given the Scheduled Castes a longer term with regard to these reservations. But as I said, it was all accepted by the House. It was accepted by Mr. Nagappa and Mr. Muniswamy Pillai and all these Members, if I may say so—I am not making any complaint— were acting on the other side, and I think it is not right now to go back on these provisions. If at the end of the ten years, the Scheduled Castes find that their position has not improved or that they want further extension of this period, it will not be beyond their capacity or their intelligence to invent new ways of getting the same protection which they are promised here.

**Shri A. V. Thakkar**(Saurashtra) : What about the Scheduled Tribes who are lower down in the scale ?

**The Honourable Dr. B. R. Ambedkar:** For the Scheduled Tribes I am prepared to give far longer time. But all those who have spoken about the reservations to the Scheduled Castes or to the Scheduled Tribes have been so meticulous that the thing should end by ten years. All I want to say to them, in the words of Edmund Burke, is " Large Empires and small minds go ill together ".

**Mr. President:** I shall now take up the amendments one by one....

**Shri Yudhisthir Mishra** (Orissa States) : Sir, I would like to withdraw my amendment.

(The amendment was, by leave, of the Assembly, withdrawn.)

**Mr. President:** Amendment No. 40 (List I—Fifth Week)

**Shri S. Nagappa** : In view of the explanation given by Dr. Ambedkar I do

not wish to press my amendment.

(The amendment was, by leave of the Assembly, withdrawn.)

**Mr. President:** Amendment No. 99 (List III—Fifth Week).

**Shri V. I. Muniswamy Pillay :** I was not present in the House on the 25th May when the Second Report of the Minorities Committee was considered. However, in view of what Dr. Ambedkar has said I would like to withdraw my amendment. '

The amendment was, by leave of the Assembly, withdrawn.

**Mr. Naziruddin Ahmad :** The principle of my amendment has been substantially accepted by Mr. T. T. Krishnamachari's amendment. Therefore, I wish to withdraw my amendment.

*[The amendment was, by leave of the Assembly, withdrawn.]*

**Mr. President:** The next amendment is No. 113 by Pandit Thakur Das Bhargava. This has been accepted by Dr. Ambedkar.

The question is:

" That in amendment No. 38 of List I (Fifth Week) of Amendments to Amendments, in the proposed new article 295-A, after the word ' Constitution ' the brackets and letter '(a) 'be inserted and after the word ' State ', the following be inserted :—

' (b) relating to the representation of the Anglo-Indian community either in the House of the people or in the Legislative Assemblies of the States through nomination. ' "

**(The amendment was adopted.)**

**Mr. President:** The next amendment is Drafting Committee's amendment No. 114.

The question is:

" That in amendment No. 38 of List I (Fifth Week) of Amendments to Amendments, to the proposed article 295-A, the following proviso be added :—

' Provided that nothing in this article shall affect the representation in the House of the People or in the Legislative Assembly of a State until the dissolution of the then existing House or the Assembly, as the case may be.' "

*[The amendment was adopted. Article 295-A, as amended, was added to the Constitution.]*

## ARTICLE 296

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**Mr. Naziruddin Ahmad :** .. My point is that the amendment should be rejected on technical as well as substantial grounds.

**Shri T. T. Krishnamachari (Madras : General) :** May I submit. Sir, that my

Honourable Friend is wholly out of order in raising this point of Order, because this matter was accepted by the House. The Honourable Member had two clear days' notice of it and if he is not able to understand the significance of the amendment in two days, I am sure he cannot understand it in two months.

**Mr. President:** Is it suggested that when the question was reopened last time with regard to reservation of seats this also was one of the points considered and on this point also a decision was taken then ?

**Shri T. T. Krishnamachari :** My suggestion is that since Muslims and Indian Christians are no longer to be treated as minorities this point does not arise.

**Mr. Naziruddin Ahmad :** Not at all. I submit that what was considered was the question of representation of minorities in the legislature. But this new article relates to a different matter, viz., the protection of the minorities in getting minor jobs in the secretariats and districts etc. On the matter of representation in the legislature Sardar Patel was kind enough to consult as and we agreed not to have any reservation in the legislature.

**The Honourable Dr. B. R. Ambedkar (Bombay : General) :** Sir, the position is this. The report of the Minorities Committee provided that all minorities should have two benefits or privileges, namely, representation in the legislatures and representation in the services. Paragraph 9 of the report which was accepted by this House contained this :

" In the all-India and provincial services the claims of all minorities shall be kept in view in making appointments to these services consistently with the consideration of efficiency in the administration."

That was the original proposition passed by this House. Subsequently the Advisory Committee came to the conclusion on the consent of the two minorities—Muslims and Christians—that they were not to be treated as minorities. When the House has now accepted that the only minorities to be provided for in this manner are the Scheduled Castes and the Scheduled Tribes obviously the Drafting Committee is bound by the decision of the House and to alter the article in terms of such decision.

**Mr. President:** The point of Order taken is that what was decided at the time of reconsideration of the articles relating to minorities referred only to reservation of seats and that the question of services was not taken into consideration and that point was not decided.

**The Honourable Dr. B. R. Ambedkar:** As I understand it, the decision was that they were not minorities and therefore they are not to have either of the two privileges.

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## ARTICLE 299

**The Honourable Dr. B. R. Ambedkar:** Sir, I beg to move :

" That for article 299, the following article be substituted :—( Special Officer for Minorities).

' 299. (1) There shall be a Special Officer for minorities to be appointed by the Special Officer, President.

(2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for minorities under this Constitution and to report to the President upon the working of the safeguards at such intervals as the president may direct, and the President shall cause all such reports to be laid before each House of Parliament.' "

The original article provided that there should be a minority officer both in the Center and in each of the provinces. It is now felt that, as the number of minorities has been considerably reduced, it is not desirable to have a cumbrous provision like that for having an officer in each province. The purpose of the original article will be carried out if the Center appoints an officer and makes him report to the President.

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## THIRD SCHEDULE

**The Honourable Dr. B. R. Ambedkar:** Sir, I move :

" That in the Third Schedule, in Form I of the Declarations, for the words and brackets solemnly affirm (or swear)', the following be substituted :—

\_\_\_\_\_ ' solemnly affirm  
swear in the name of God.' "

Sir, I also move :

" That in the Third Schedule, in Form II of the Declarations, for the word's and brackets solemnly affirm (or swear)', the following be substituted :—

\_\_\_\_\_ ' solemnly affirm  
swear in the name of God.' "



" That in the Third Schedule, in Form 111 of the Declarations

(a) for the word ' declaration ' the words ' affirmation or oath ' be substituted;

(b) for the words ' solemnly and sincerely promise and declare ' the following be substituted:—

' solemnly affirm  
\_\_\_\_\_   
swear in the name of God.' "

" That is the Third Schedule, in Form IV of the Declarations,—

(a) for the word ' declaration ' the words ' affirmation or oath ' be substituted;

(b) for the words ' solemnly and sincerely promise and declare ' the following be substituted:—

' solemnly affirm  
\_\_\_\_\_   
swear in the name

" That in the Third Schedule, in Form V of the Declarations,—

the words and figure ' for the time of God.' "

(a) being specified in Part I of the First Schedule be omitted;

(b) for the words and brackets ' solemnly affirm (or swear)', the following be substituted:—

' solemnly affirm  
\_\_\_\_\_   
swear in the name of God.' "

" That in the Third Schedule, in Form VI of the Declarations,—

(a) the words and figure ' for the time being specified in Part I of the First Schedule be omitted;

(b) for the words and brackets ' solemnly affirm (or swear) ', the following be substituted:—

' solemnly affirm  
\_\_\_\_\_   
swear in the name of God.' "

" That in the Third Schedule, in Form VII of the Declarations,—

(a) for the word ' declaration ' the words ' affirmation or oath ' be substituted;

(b) the words and figure ' for the time being specified in Part I of the First Schedule ' be omitted;

(c) for the words ' solemnly and sincerely promise and declare ', the following be substituted:—

' solemnly affirm  
\_\_\_\_\_   
swear in the name of God.' "

" That in the Third Schedule, in Form VIII of the Declarations,—  
(a) for the word ' declaration ' the words ' affirmation or oath ' be substituted;  
(b) for the words ' solemnly and sincerely promise and declare ' the following be substituted:—

' solemnly affirm  
\_\_\_\_\_   
swear in the name of God.'

" Sir, I also move :

" That in the Third Schedule for the heading ' Forms of Declarations ' the heading ' Forms of affirmations or Oaths ' be substituted."

**Mr. President:** I take it that there is no objection to the heading being changed.

**Mr. Naziruddin Ahmad :** There is no objection. Sir.

**Mr. President:** Then the heading is changed....

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**The Honourable Dr. B. R. Ambedkar:** Sir, I move :

" That in Form VI of the Forms of Declarations in the third Schedule, the words ' or as may be specially permitted by the Governor in the case of any matter pertaining to the functions to be exercised by him in his discretion ' be omitted."

These are unnecessary because we do not propose to leave any discretion in the Governor at all.

**Shri H. V. Kamath :** May I remind Dr. Ambedkar that 143 has not yet been amended ?

**The Honourable Dr. B. R. Ambedkar:** Yes, I remember that.

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**Mr. President:** We have abolished all discretion.

**Mr. Naziruddin Ahmad :** The difficulty arises in connection with the phraseology occurring at the end of Form VI.

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**Mr. President:** That is why Dr. Ambedkar has moved for its deletion.

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**The Honourable Dr. B. R. Ambedkar:** In proposing this amendment, I have not the slightest desire to offend the sentiments of some of the Members who have spoken against the draft on the ground that God has been placed

below the line. Sir, in this matter I must admit that we have really no consistent policy which we have followed, for instance, in article 49, which has been passed. God has been, I think, placed above the line and affirmation below the line. In article 81, we have placed affirmation first and the oath afterwards. In this article, to which we have moved amendments, we have merely followed the wording of the principal clause, which runs : " Affirm or Swear ". That being the language of the principal clause, the logical sequence was that the affirmation was placed above the line and the oath was placed below. It is a purely logical thing. Now, the reason why we have thought it desirable to place affirmation first and oath afterwards, was because in this country, at any rate, the Hindu, when he is called upon in any Court of Law to give evidence, generally begins by an affirmation. It is only Christians, Anglo-Indians and Muslims who swear. The Hindus do not like to utter the name of God. I therefore thought that in a matter of this sort, we ought to respect the sentiments and practice of the majority community, and consequently we have introduced this particular method by stating the position as to affirmation and oath. As I said, I have neither one view nor the other. I am perfectly prepared to carry out the wishes of the House. If the House is of the opinion that Mr. Kamath's amendment should be accepted—and I submit that that would be contrary to the practice prevalent in this country so far as the Hindus are concerned—then what I would suggest is this, that my amendments would be allowed at this stage, with the liberty that the Drafting Committee will take into consideration all the other articles which have been incorporated in the Constitution so far as to bring the whole matter in line. It will not be proper to make a change here and to leave the other articles as they stand.

**Shri Mahavir Tyagi** : Let grammer not stand in the way of God !

**Shri H. V. Kamath** : With regard to article 81, there was no amendment before the House. It was stated that every Member in each House of Parliament should make an affirmation and an oath according to the Third Schedule. But what the House has already adopted is the oath or affirmation for the President and the Governors, and that is in the form set out by me in my amendment today.

**Mr. President**: It is not necessary to have a discussion over this matter. You had better vote on it. It is not a question on which there is room for much discussion. As Dr. Ambedkar has said, he has no particular feeling in the matter, and if the House decides one way, he will ask for the liberty to put all the articles in that form. So I shall put the amendment to the vote.

**Mr. Naziruddin Ahmed** : My amendment have not been touched by Dr. Ambedkar at all.

**Mr. President:** That is different.

**The Honourable Dr. B. R. Ambedkar:** After the word " sincerely "? After " sincerely " I would like to add something more. It would not be enough.

**Mr. President:** He wants the omission of the word " affection " .

*(after a pause)*

Well, I will take up the amendment.

(Following amendment was adopted)

"That in Amendment Nos. 56 to 63 of List I (Fifth Week) of Amendments to Amendments, in the form of the oath or affirmation in the Third Schedule, for the words

' solemnly affirm \_\_\_\_\_  
swear in the name of God '

(Proposed to be substituted), the following be substituted:—

' swear in the name of God \_\_\_\_\_  
solemnly affirm. ' "

(The amendment was adopted.)

**Mr. President:** I take it that the House gives leave to Dr. Ambedkar to put the other articles, wherever such similar expressions occur in the same order.

**Honourable Member:** Yes.

**Shri Jaspal Roy Kapoor :** May I suggest that in all the places where we have the words " affirmation or oath " we may have the ' oath ' first and ' affirmation ' afterwards. It should be so in the substantive clause also.

**Mr. President:** That is so. It should be put in the same order wherever the expression occurs.

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**Mr. President:** The question is :

" That with reference to amendment No. 56 of List I ( Fifth Week) of Amendments to Amendments, in the Third Schedule, in Form I of the Declarations, for the words ' all manner of people ' the words ' all people ' be substituted."

**Mr. Naziruddin Ahmad:** This may be left to the Drafting Committee.

**Mr. President:** It is not pressed. So I take it that it is dropped.

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**Mr. President:** The question is :

" That in Form VI of the Forms of Declarations in the Third Schedule, the words ' or as may be specially permitted by the Governor in the case of any matter pertaining to the functions to be exercised by him in his discretion ' be omitted."

(The amendment was adopted.)

**Mr. President:** I do not think it is necessary to put the other amendments to vote, because the voting will be the same as with regard to the other amendments.

**Mr. Naziruddin Ahmad :** They may be formally put and rejected by the House.

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**Mr. President:** Then I put the proposition moved by Dr. Ambedkar, as amended by Mr. Kamath's amendment and Dr. Ambedkar's own amendment, with regard to all these forms. I do not think it is necessary to read them separately.

(The motion was adopted.)

**Mr. President:** The question is :

" That the Third Schedule, as amended, stand part of the Constitution."

The motion was adopted.

The Third Schedule as amended, was added to the Constitution.

**Mr. President:** I do not think the Member has any justification for supposing that other members do not study the amendments.

**Mr. Naziruddin Ahmad :** I have been assured by some very serious Members that they have not read the amendments. Therefore, in view of the serious nature of the amendments I say that the house should have time to consider them.... -

**Mr. President:** If any question is raised with regard to any particular amendment or item and if Members want time, we shall consider that at that time. Let us now proceed item by item.

**The Honourable Dr. B. R. Ambedkar** (Bombay : General) : I would like to say that these amendments were circulated on Saturday, day before yesterday.

**Mr. President:** Were they circulated on Saturday ?

**Some Honourable Members :** Yes, Sir.

**The Honourable Dr. B. R. Ambedkar:** On Saturday evening, I think. So far as Mr. Naziruddin Ahmad is concerned, there are some forty amendments standing in his name.

**Mr. Naziruddin Ahmad :** Only twenty.

**The Honourable Dr. B. R. Ambedkar:** They cover the whole of List 1. Therefore my submission is that the complaint, so far as he is individually concerned, that he did not have time, must be regarded as absolutely

unfounded.

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